IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR RIVERSIDE NATIONAL BANK OF FLORIDA,

Plaintiff,

vs.

VERNON SMITH, CINDY ROBBINS, RAY HORTON, ROBERT MCCARTHY, TIMOTHY MCGUIRE, SUSAN SPROUL, STEVE STRICKLAND, JOHN WILLIAMS,

Defendants.
_____/

CIVIL ACTION NO. _____

COMPLAINT

Plaintiff, Federal Deposit Insurance Corporation as Receiver for Riverside National Bank of Florida ("FDIC-R") sues the Defendants, VERNON SMITH, CINDY ROBBINS, RAY HORTON, ROBERT MCCARTHY, TIMOTHY MCGUIRE, SUSAN SPROUL, STEVE STRICKLAND, and JOHN WILLIAMS. As grounds for its Complaint, Plaintiff states as follows:

I. INTRODUCTION

1. The FDIC-R brings this action in its capacity as Receiver against certain former officers and a director of Riverside National Bank of Ft. Pierce, Florida ("RNB" or the "Bank"). On April 16, 2010, RNB was closed by the Office of the Comptroller of the Currency ("OCC"). The estimated material loss to the Deposit Insurance Fund is approximately $491.8 million.

2. Prior to its demise, RNB was wholly owned by Riverside Banking Company ("RBC"), a nonpublic single-bank holding company formerly doing business in Florida. In addition to RBC, RNB was also affiliated with several other nonpublic bank holding companies,

including but not limited to Riverside Gulf Coast Banking Company ("RGCB") and The Prosperity Banking Company ("Prosperity").

3. RGCB was the single-bank holding company of Riverside Bank of the Gulf Coast, in Cape Coral, Florida. That bank failed on February 13, 2009. Prosperity was the single-bank holding company of Prosperity Bank, St. Augustine, Florida, which remains open.

4. Plaintiff seeks recovery in excess of $8 million in damages caused by defendants' breaches of duties, gross negligence, and negligence based on defendants' permitting an excessive number of poorly underwritten loans to be made that were secured solely or largely by the stock of RBC affiliates, including the seven commercial loans and one consumer loan discussed below (the "Loan Transactions").

5. While banks are generally prohibited from making loans secured by their own stock, they are permitted to make loans secured by the stock of their holding companies subject to certain limitations intended to avoid over-reliance on the financial condition of a bank's affiliates. The Defendants had personal knowledge of the dangers inherent in such stock loans, not only by way of its general loan policy noting the potential undesirability of such loans,[1] but also as a result of criticisms raised in early 2006 by its independent auditor, Protiviti. Protiviti noted in its Report dated March 27, 2006 that RNB held an excessive number of loans secured by RBC stock, over and above regulatory limits. This issue was identified by the management of RNB and communicated to Protiviti prior to the audit.

6. In addition, regulators pointed out to RNB their lacking of an acceptable policy for this product line and for the potential for increased risk due to the variance in rate and terms

[1] For example, in its Loan Policy revised as of May 12, 1998, Chapter IV, Section II governing "Undesirable Loans" includes "Loans where substantial collateral reliance is placed on stock of closely held corporation having no ready market." However, its Loan Policy updated as of April 1, 2003 excluded "*loans secured by Riverside National Bank and affiliate Bank stock.*" The same exclusion applied to RNB's "Prohibited Loans" as of February 17, 2005, for loans secured with restricted stock. RNB and affiliate stock was excluded.

of some 172 stock loans with a then outstanding balance of more than $24 million. For example, on August 19, 2005, the BLC unanimously approved a commercial term stock loan to Varn Citrus, Inc. in the principal amount of $4,216,000.[2] The loan was secured with 11,000 shares of RBC's stock. The regulators pointed out to RNB that the company had suffered losses in 2007, financials were stale, and the collateral had suffered a major loss in value. This loan was partially charged-off on December 17, 2009 for $2,649,740. As of February 2010 the loan outstanding was $1,292,000.

7. Also, in 2004, RNB granted a consumer loan to William Dannahower in the original amount of $650,000.00. The loan was approved by the 6 members of the BLC and was secured with 1,628 shares of RBC's stock, increased to 6,011 shares in 2009. The repayment source was an anticipated refinance of Dannahower's home. This primary repayment source was a policy violation, pursuant to the Loan Procedures Manual, Sec 4.30, which requires that the borrower have a "demonstrable ability to repay the debt from reoccurring cash flow from ongoing operations, the conversion of assets in the normal course of business plus a second identified source of repayment". The loan was completely written off on September 21, 2009 on the basis of the total loss of value of the RBC stock and no other means of repayment.

8. Additionally, the regulators noted that some stock loans were totally collateral dependent for repayment.

9. In response to the criticism, RNB amended its loan policy and procedures on May 22, 2006. Specifically, RNB established Loan Procedure 2.61, as its "best practice" for making loans secured by RNB affiliate stock. The amendment provided that:

> Loans secured by Riverside Banking Company Stock (for a purpose other than purchase of stock) shall be limited to the lesser of the

[2] Defendants McGuire, Robbins, McCarthy, Horton, Williams and Strickland, together with C. Robinson, A. Boggs approved the loan.

> annual independent valuation of the stock, or 90% of the buy-back price. All loans will be term loans not to exceed a 10 year amortization with a five year balloon. Interest only is an available option for a period not to exceed 2 years. All loans will be underwritten in the Commercial Loan area and will require a debt service of a minimum of 1.2 times.
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> Loans for the purpose of purchasing Riverside Banking Company Stock shall be limited to 70% of the annual independent valuation of the stock. (the "2006 Amended Policy") (emphasis added).

10. The Directors Loan Committee which included Defendant Vernon Smith, RNB's CEO and President, approved the 2006 Amended Policy at a May 18, 2006 meeting at which Defendants Timothy McGuire, RNB's Senior Lending Officer and Executive Vice President, and Robert McCarthy, RNB's Senior Credit Officer and Executive Vice President were also present.

11. Notwithstanding implementation of the stricter 2006 Amended Policy, the Defendants, as members of the BLC, turned a blind eye to the policy and best practices, approving each of the Loan Transactions on terms and conditions that violated the stated policy and procedures of RNB. In so doing, the Defendants thus ignored the clear warnings of the Regulators despite known perils.

12. Notwithstanding the clear limitations of the 2006 Amended Policy, none were evident in the structure of the Loan Transactions; instead, the Defendants allowed the affiliate stock collateral to be treated essentially as a cash equivalent.

13. By approving stock-secured loans in violation of Loan Policy and failing to follow proper underwriting, the Defendants deviated from safe and sound banking practices in a negligent or grossly negligent manner, causing damage to RNB for, among other things, the Loan Transactions.

II. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction 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.

15. The Court has personal jurisdiction over the Defendants who at all relevant times were residents of this State, and who conducted the business of RNB within St. Lucie and other counties within the Southern District of Florida.

16. 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. PARTIES

17. The FDIC is a corporation organized and existing under the laws of the United States with its principal place of business in Washington, D.C. 12 U.S.C. §1811 *et seq.* The FDIC is an instrumentality of the United States of America, and is charged with, among other duties, the orderly liquidation of failed banks. The FDIC was appointed as the Receiver of RNB pursuant to 12 U.S.C. § 1821(c) on April 16, 2010. 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 RNB and its depositors, account holders, other creditors and shareholders, including, but not limited to, claims against RNB's former officers and directors.

18. Defendant Smith was founder and CEO of RNB during the relevant time period. He served as a director of RNB, RBC, RGCB, and Prosperity. As CEO, Smith was ultimately responsible for the proper implementation of the 2006 Amended Policy. Pursuant to section 3.30

of the Bank's applicable Loan Policy, Smith, as CEO, had veto power over any loan approved by the BLC.[3] Smith is a resident of the State of Florida, residing in St. Lucie County, Florida.

19. Defendant Cindy Robbins ("Robbins") was RNB's Chief Operating Officer ("COO") from February 1, 2004 until February 1, 2008, and a director from August 17, 2006, until December 31, 2008. At all times material to the Complaint, Robbins served on the BLC. Pursuant to section 3.30 of the Bank's applicable Loan Policy as COO she had veto power over any loan approved by the BLC. Robbins is a resident of the State of Florida, residing in Hillsborough County, Florida.

20. Defendant Ray Horton ("Horton") was a Senior Vice President and Special Assets Officer and was employed by RNB from July 1, 1991 until June 30, 2009. At all times material to the Complaint, Horton served on the BLC. Horton is a resident of the State of Florida, residing in St. Lucie County, Florida.

21. Defendant Robert McCarthy ("McCarthy") was a Senior Credit Officer ("SCO") from April, 2003 until October 17, 2007. McCarthy served on the BLC until his departure from the bank on October 17, 2007. Pursuant to section 3.30 of the Bank's applicable Loan Policy, McCarthy, as SCO, had veto power over the loans approved by the BLC during his tenure as SCO. McCarthy is a resident of the State of Florida, residing in Indian River County, Florida.

22. Defendant Timothy McGuire ("McGuire") was employed at RNB from September 8, 2003, until the time of the bank's failure. His positions during that time included service as a Vice President, Special Assets Manager, Chairman of the Bank Loan Committee, and Senior Lending Officer ("SLO"). At all times material to the Complaint, McGuire served on the BLC. Pursuant to section 3.30 of the Bank's applicable Loan Policy, McCarthy, as SLO,

[3] Pursuant to Section 4.10 (later amended to Section 3.30) the Bank's Loan Policy, from 2003 to 2007, the CEO, COO, SLO, SCO held veto power of the BLC's loan approvals. The policy was again amended in April, 2007 to exclude the COO from the policy.

had veto power over the loans approved by the BLC during his tenure as SLO. McGuire is a resident of the State of Florida, residing in St. Lucie County, Florida.

23. Defendant Susan Sproul ("Sproul") was employed at RNB from May 31, 2005, until the time of the bank's failure. Her positions during that time included service as a Vice President and Credit Analyst. At all times material to the Complaint, Sproul served on the BLC. Sproul is a resident of the State of Florida, residing in Palm Beach County, Florida.

24. Defendant Steve Strickland ("Strickland") was Regional Credit Manager from February 16, 2000, until September 1, 2007, and a Commercial Lender ("CL") from September 1, 2007, until the Bank failed. At all times material to the Complaint, Strickland served on the BLC. Strickland is a resident of the State of Florida, residing in Palm Beach County, Florida.

25. Defendant John Williams ("Williams") was employed at RNB from October 1, 1999, until the time of the bank's failure. His positions during that time included service as President and COO of the Bank. At all times material to the Complaint, Williams served on the BLC. Williams is a resident of the State of Florida, residing in Okeechobee, Florida.

IV. FACTS COMMON TO ALL COUNTS

A. Riverside National Bank's Policy on Affiliate Stock Lending Devolved into an Unsafe and Unsound Practice

26. RNB was founded on September 15, 1982, as a privately owned national bank headquartered in Ft. Pierce, Florida. It operated primarily as a community bank, growing to 60 branches in ten (10) counties as of the time of its closing. RBC, the Bank's Holding Company, was a closed corporation, with approximately 45% of its stock held by the Bank's directors. The balance of RBC stock was owned by local businesspeople (including former board members) and their families, and by Bank employees.

27. There was no active market in RBC stock. Both RGCB and Prosperity were nonpublic bank holding companies with thinly traded stock.

28. The Defendants, as officers and/or directors, were responsible for the overall management of RNB, including but not limited to, ensuring that RNB:

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 assure that loans were properly documented and otherwise satisfied RNB's lending policies as well as prudent lending practices; and

d. Had a business model consistent with safe and sound banking practices.

29. The Defendants, as members of the BLC, were responsible for upholding the general lending philosophy of the Bank, including:

a. Operating within lending policy guidelines, even at the expense of volume;

b. Controlling risks;

c. Maintaining sound credit infrastructures; and

d. Maintaining an incentive system at all levels to reinforce and support the Bank's state priorities, including quality assets, profitable relationships, and prudent growth.

30. Despite the criticisms in 2006, and the Bank's subsequently enacted 2006 Amended Policy, the Defendants, as members of the BLC, continued to approve loans secured by unlisted stock that was *not* RBC stock, as specifically required by the policy. Such loans were prohibited.

31. Moreover, while the Defendants further approved loans secured by RBC stock, as permitted by the policy, they violated the underwriting and independent valuation requirements

and limitations of the 2006 Amended Policy. This large and potentially risky concentration of loans quickly devolved into non-performing, under-collateralized loans as the economic downturn accelerated in 2007.

32. As loan losses increased at the Bank level, RBC and other Bank affiliates suspended the payment of dividends on their stock. Accordingly, the primary source of repayment for the Loan Transactions quickly became impaired. The Defendants' practice of approving the stock loans in violation of the structural requirements of the 2006 Amended Policy resulted in poorly underwritten loans that were overly dependent upon affiliated-entity dividends that had, by now, dried up.

33. From May, 2006, to March, 2008, the total amount of loans secured by affiliated stock doubled from $18 million to $36 million, of which approximately $9 million were the Loan Transactions. By 2009, RNB charged off more than $16 million of the outstanding balances of loans secured by affiliate stock, exacerbating the Bank's undercapitalized position.

34. Rather than create and implement conservative and safe loan underwriting and administration practices, the Defendants created an environment in which unsafe and unsound lending practices abounded. As members of the BLC, they failed to monitor and control RNB's lending operations properly, pursuing imprudent lending in spite of warnings to more carefully monitor and adjust RNB's risk profile, credit administration, and loan standards.

B. The Loan Transactions and Violations of RNB's Loan Policy

35. The eight separate stock loans discussed below are examples of those imprudent loans that resulted in significant losses to RNB totaling at least $7.92 million, exclusive of prejudgment interest or attorneys' fees.

36. Because of the size of each of the loans described below, the BLC was required to affirmatively vote to approve each loan. When each vote was taken, a presentation about the

loan was made to the Defendants who were present (in person or by phone). The Defendants had access to all credit information about the proposed loan, and could have requested additional information to determine if the loan should be approved or declined.

37. Every one of the loans described below was approved without dissent and contained obvious substantial and material deficiencies that should have been readily apparent upon even a superficial review of the information available to them regarding the loans.

Loan # 1

38. The first Loan Transaction, to E. P. and K. P.[4], was unanimously approved by those members present during the BLC meeting on May 10, 2007, in the amount of $2,500,000.00 ("Loan No. 1"). See Exhibit "A" incorporated herein. K. P. is the daughter of Defendant Smith.[5] The credit was requested to purchase a REIT investment, and originated as a two year interest only line of credit with a balloon payment. The collateral for the loan was 11,703 shares of RBGC stock.

39. Certain of the Defendants approved and/or permitted Loan No. 1 notwithstanding numerous serious loan underwriting deficiencies including, without limitation, the following:

a. Loan No. 1 violated the 2006 Amended Policy in that the unlisted stock securing the loan was not RBC stock. Even if it were, the loan should have been structured as a commercial term loan, with a maximum 10 year amortization and five-year term, with a balloon payment. Instead, the loan was structured as a letter of credit with no amortization.

b. The Loan to Value ratio was greater than the amount allowed by RNB's loan policy and limits set by Regulators. Even if RBGC stock were allowed under the

[4] To protect the privacy of individual borrowers, only their initials are used herein. Their full names will be provided after an appropriate protective order is in place.

[5] Defendants Smith and Robbins, both members of the BLC, were not in attendance for this meeting. Attached as Exhibit "A" hereto is a chart setting forth the members of the BLC who approved each of the Loan Transactions,

policy, the maximum amount of the loan could not exceed *the lesser of* the independent valuation of the RBGC shares or 90% of the buy-back price of the shares. The loan did not comply. No independent valuation of the stock was performed or provided in the loan package.

c. The loan documents stated that the sole source for repayment of the loan was liquidation of the REIT stocks subject to purchase or the borrower's stock in RNB's affiliated entities. This violates Sec. 1.30(6) of the 2006 Loan Procedures, listing loans for speculative purposes where the only source of repayment is resale of the collateral, except loans for construction of single family residences, as Undesirable Loans.

d. The loan further failed to include a determination that: (i) there was sufficient cash flow to meet debt service requirements, and (ii) the "liquid assets" of the borrowers were supported by "supportable values" as required by the loan policy.

e. Given the credit and underwriting variances granted the borrower, and the fact that she was the daughter of RNB's CEO and President, Defendant Vernon Smith, the loan should also have been approved by the Director's Loan Committee prior to funding, but was not, in violation of RNB's loan policy.

40. As a direct and proximate result of the Defendants' actions and inactions, RNB suffered a loss of in excess of $2.256 million on Loan No. 1.

Loans #2-4.

41. The second through fourth Loan Transactions include various stock loans made to C. S., the son of RNB's CEO and President, Defendant Vernon Smith. The first of such loans was unanimously approved by those members present during the BLC meeting on August 31,

2006,[6] in the amount of $330,000, for the purpose of allowing the borrower to make real estate investments through C&D Holdings, LLC, in which he maintained a 50% interest ("Loan No. 2"). See Exhibit "A" incorporated herein. The initial collateral for the loan was 2,276 shares of RBGC stock.

42. Certain of the Defendants approved and/or permitted Loan No. 2 notwithstanding numerous serious loan underwriting deficiencies including, without limitation, the following:

a. Loan No. 2 violated the 2006 Amended Policy in that the unlisted stock securing the loan was not RBC stock. Even if it were, the loan should have been structured as a commercial term loan, with a maximum 10 year amortization and five-year term, with a balloon payment. Instead, the loan was structured as an interest only loan for the first three (3) years then requiring quarterly principal payments based upon a 22 year amortization period.

b. Loan No. 2 violated the 2006 Amended Policy by allowing interest only to be paid for a period of three (3) years, when the policy specifically limited interest only to no more than two (2) years.

c. The Loan Value ratio was greater than the amount allowed by RNB's loan policy and limits set by Regulators. Even if the RBGC stock were allowed by the policy, the maximum amount of the loan could not exceed *the lesser of* the independent valuation of the RBGC shares or 90% of the buy-back price of the shares. Loan No. 2 did not comply. No independent valuation of the stock was performed or provided in the loan package.

d. Loan No. 2 further failed to comply with the underwriting requirements for a commercial term loan as required by RNB's Loan Procedures Manual in that: (i)

[6] Defendant Smith, a member of the BLC, was not in attendance for this meeting.

The earnings and cash flow analysis of the borrower improperly included three companies in which the borrower purportedly maintained a majority interest; however, none of the companies were guarantors or were otherwise legally obligated to repay the loan. Absent these entities, C. S.'s tax returns for 2003 to 2005 reflected insufficient cash flow to meet the Bank's debt service requirements of 1.2 times, as per the 2006 Amended Policy; (ii) the "liquid assets" of the borrowers were not supported by "supportable values" as required by the loan policy; and (iii) there was no "demonstrated ability to repay from conversion of assets in the normal course of business or recurring cash flow from ongoing operations, plus a second identified source of repayments, as required by Sec. C-4.30 of the Loan Procedures Manual.

e. Additionally, the borrower's credit report dated August 15, 2006 maintained negative delinquency remarks, which the BLC failed to address. Moreover, in May, 2008, the borrower replaced the RBGC stock collateral with 597 shares of Prosperity Bank. Again, such stock was neither RBC stock, as expressly required by the policy; moreover, no independent valuation of that stock occurred at the time of the swap.

f. Given the credit and underwriting variances granted the borrower, and the fact that he was the son of RNB's CEO and President, Defendant Vernon Smith, the loan should also have been approved by the Director's Loan Committee prior to funding, but was not, in violation of RNB's loan policy.

43. As a direct and proximate result of the Defendants' actions and inactions, RNB suffered a loss of in excess of $296,000 on Loan No. 2.

44. A second stock loan to C. S. in the amount of $200,000 was unanimously approved by those members who voted on the issue during the BLC meeting on August 2, 2007,[7] for the purpose of repurchasing a $200,000 revolving line of credit from Prosperity Bank ("Loan No. 3"). See Exhibit "A" incorporated herein. As collateral for the loan, Smith provided 742 shares of RBC stock.

45. Certain of the Defendants approved and/or permitted Loan No. 3 notwithstanding numerous serious loan underwriting deficiencies including, without limitation, the following:

a. Loan No. 3 violated the 2006 Amended Policy in that it should have been structured as a commercial term loan, with a maximum 10 year amortization and five-year term, with a balloon payment. Instead, the loan was structured as an interest only revolving line of credit, with the principal due upon demand. It provided no specific maturity date, nor any amortization period, in violation of Bank policy, which allowed two years maximum of interest only payments.

b. The loan further failed to comply with the underwriting requirements for a commercial revolving line of credit, which otherwise limited the revolving period to a maximum of three (3) years, a maximum five (5) year amortization, and a combined revolving period and amortization not to exceed seven (7) years.

c. Additionally, the earnings and cash flow analysis of the borrower improperly included three companies in which the borrower purportedly maintained a majority interest; however, none of the companies were guarantors or were otherwise legally obligated to repay the loan. Absent these entities, C. S.'s tax returns for 2004 to 2005 (and pro forma 2006) were incomplete and reflected

[7] Defendant Robbins, a member of the BLC, was not in attendance for this meeting. Additionally, Defendant Smith abstained from voting.

insufficient cash flow to meet the Bank's debt service requirements of 1.2 times, as required for a revolving line of credit. Given that only interest payments were included within this calculation, the policy exception was all the more egregious.

d. Moreover, (i) the "liquid assets" of the borrowers were not supported by "supportable values" as required by the loan policy; (ii) there was no "demonstrated ability to repay from conversion of assets in the normal course of business or recurring cash flow from ongoing operations, plus a second identified source of repayments, as required by Sec. C-4.30 of the Loan Procedures Manual and (iii) the borrower's credit report dated July 30, 2007 maintained negative delinquency remarks, which the BLC failed to address.

e. Given the credit and underwriting variances granted the borrower, and the fact that he was the son of RNB's CEO and President, Defendant Vernon Smith, the loan should also have been approved by the Director's Loan Committee prior to funding, but was not, in violation of RNB's loan policy.

46. As a direct and proximate result of the Defendants' actions and inactions, RNB suffered a loss of in excess of $180,000 on Loan No. 3.

47. The third stock loan to C. S. was unanimously approved by those members who voted on the issue during the BLC meeting on November 1, 2007,[8] in the amount of $800,000, for the purpose of allowing the borrower to make real estate investments (Loan #4"). See Exhibit "A" incorporated herein. The initial collateral for the loan was 1,430 shares of Prosperity Bank stock.

[8] Defendant Williams, a member of the BLC, was not in attendance for this meeting. Furthermore, Defendant McCarthy was no longer with RNB at the time of this vote. Additionally, Defendant Smith abstained from voting.

48. Certain of the Defendants approved and/or permitted the Loan No. 4 notwithstanding numerous serious loan underwriting deficiencies including, without limitation, the following:

a. Loan No. 4 violated the 2006 Amended Policy in that the unlisted stock securing the loan was not RBC stock. Even if it were, the loan should have been structured as a commercial term loan, with a maximum 10 year amortization and five-year term, with a balloon payment. Instead, the loan was structured as an interest only revolving line of credit, with principal due on demand. It provided no specific maturity date, nor any amortization period, in violation of Bank policy, which allowed two years maximum of interest only payments.

b. The Loan to Value ratio was greater than the amount allowed by RNB's loan policy and limits set by Regulators. Even if the stock were allowed by the policy, the maximum amount of the loan could not exceed *the lesser of* the independent valuation of the Prosperity shares or 90% of the buy-back price of the shares. The loan did not comply. No independent valuation of the stock was performed or provided in the loan package.

c. The loan further failed to comply with the underwriting requirements for a commercial revolving line of credit, which otherwise limited the revolving period to a maximum of three (3) years, a maximum five (5) year amortization, and a combined revolving period and amortization not to exceed seven (7) years.

d. Additionally, the earnings and cash flow analysis of the borrower improperly included three companies in which the borrower purportedly maintained a majority interest; however, none of the companies were guarantors or were otherwise legally obligated to repay the loan. Absent these entities, C. S.'s tax

returns for 2004 to 2006 were incomplete and reflected insufficient cash flow to meet the Bank's debt service requirements of 1.2 times, as required for a revolving line of credit. Given that only interest payments were included within this calculation, the policy exception was all the more egregious.

e. Moreover, (i) the "liquid assets" of the borrowers were not supported by "supportable values" as required by the loan policy; (ii) there was no "demonstrated ability to repay from conversion of assets in the normal course of business or recurring cash flow from ongoing operations, plus a second identified source of repayments, as required by Sec. C-4.30 of the Loan Procedures Manual and (iii) the borrower's credit report dated July 30, 2007 maintained negative delinquency remarks, which the BLC failed to address.

f. Given the credit and underwriting variances granted the borrower, and the fact that he was the son of RNB's CEO and President, Defendant Vernon Smith, the loan should also have been timely approved by the Director's Loan Committee prior to funding, but was not, in violation of RNB's loan policy.

49. As a direct and proximate result of the Defendants' actions and inactions, RNB suffered a loss of in excess of $725,000 on Loan No. 4.

Loans # 5 and 6

50. The fifth and sixth Loan Transactions were made to borrower F. S., the son of one of RNB's original stockholders and a former director of the Bank. Each of the loans was secured by RBC stock.

51. The fifth Loan Transaction was for $3,620,000 and was requested in order to repurchase a matured loan participated to Seacoast Bank in the approximate amount of $1.8 million and to refinance another existing loan with First Peoples Bank in the amount of $1.8

million ("Loan No. 5"). See Exhibit "A" incorporated herein. It was unanimously approved during the BLC meeting on August 9, 2007. The collateral for the Loan was 8,868 shares of RBC stock.

52. Certain of the Defendants approved and/or permitted Loan #5 notwithstanding numerous serious loan underwriting deficiencies including, without limitation, the following:

a. Loan No. 5 violated the 2006 Amended Policy in that it should have been structured as a commercial term loan, with a maximum 10 year amortization and five-year term, with a balloon payment. Instead, the loan was structured as a four (4) year term loan with a 20 year amortization, thus requiring a large balloon payment at the end of its term.

b. While the stated primary source for repayment was the borrower's personal cash flow, the loan documents evidence such cash flow was dependent upon the future sale of RBC stock or the receipt of dividends therefrom. The secondary repayment source was listed as the borrower's personal holdings of RBC stock. However, RNB's Loan Procedures Manual specifies that collateral is not a repayment mechanism and should not be shown as the primary or secondary source for payment of the loan.

c. While cash and marketable securities were listed as exceeding $250,000 in October, 2006, and June, 2007, the loan documents indicate that the assets were not verified by a loan officer in accordance with the Bank's Loan Procedures.

d. The loan further failed to comply with the underwriting requirements for a commercial loan, in that: (i) the borrower's tax returns for years 2003 to 2005 were not properly prepared by a certified public accountant; (ii) the borrower's financial statements were incomplete and reflected insufficient cash flow to meet

the Bank's debt service requirements of 1.2 times throughout the term, and (iii) the loan documents failed to reflect that the borrower was unemployed and held only occasional consulting jobs.

e. The risk grade of the loan was rated as a 5 from inception. RNB's Loan Procedures Manual permitted loans of no more than $2.5 million for loans rated a "5." The BLC failed to note the exception.

f. Moreover, (i) the "liquid assets" of the borrowers were not supported by "supportable values" as required by the loan policy (excluding the RBC stock, the borrower's net worth was negative for both periods); (ii) there was no "demonstrated ability to repay from conversion of assets in the normal course of business or recurring cash flow from ongoing operations, plus a second identified source of repayments, as required by Sec. C-4.30 of the Loan Procedures Manual and (iii) the borrower's credit report maintained negative delinquency remarks, which the BLC failed to address.

53. The loan was charged off in full by July, 2009, given the loss of value in the RBC stock and the borrower's lack of any other means of repayment.

54. As a direct and proximate result of the Defendants' actions and inactions, RNB suffered a loss of in excess of $3,500,000 on Loan No. 5.

55. The sixth Loan Transactions, also made to F. S., was unanimously approved during the BLC meeting on August 9, 2007, and was a commercial revolving line of credit for $250,000. See Exhibit "A" incorporated herein. The purpose of the loan was to fund the borrower's short term cash needs ("Loan No. 6). The 8,868 shares of RBC stock securing the Loan No. 5 further served as security for Loan No. 6.

56. Certain of the Defendants approved and/or permitted Loan No. 6 notwithstanding numerous serious loan underwriting deficiencies including, without limitation, the following:

a. Loan No. 6 violated the 2006 Amended Policy in that it should have been structured as a commercial term loan, with a maximum 10 year amortization and five-year term, with a balloon payment. Instead, the loan was structured as an interest only, revolving line of credit with a two (2) year maturity.

b. As a revolving line of credit, the Loan Procedures Manual required a three (3) year maximum revolving period, a five year amortization, and a combined revolving period and amortization not to exceed seven years. However, Loan No. 6 provided for no amortization of the loan.

c. When considered together, the LTV ratio of Loan No. 5 and Loan No. 6 amount to 99%, based on the value of the RBC stock, providing little to no margin of collateral protection for RNB.

d. While the stated primary source for repayment was the borrower's personal cash flow, the loan documents evidence such cash flow was dependent upon the future sale of RBC stock or the receipt of dividends therefrom. The secondary repayment source was listed as the borrower's personal holdings of RBC stock. However, RNB's Loan Procedures Manual specifies that collateral is not a repayment mechanism and should not be shown as the primary or secondary source for payment of the loan.

e. Cash and marketable securities were listed as exceeding $250,000 in October, 2006, and June, 2007, but the loan documents indicate that the assets were not verified by a loan officer in accordance with the Bank's Loan Procedures.

f. The loan further failed to comply with the underwriting requirements for a commercial loan, in that: (i) the borrower's tax returns for years 2003 to 2005 were not properly prepared by a certified public accountant; (ii) the borrower's financial statements were incomplete and reflected insufficient cash flow to meet the Bank's debt service requirements of 1.2 times throughout the term, and (iii) the loan documents failed to reflect that the borrower was unemployed and held only occasional consulting jobs.

g. Moreover, (i) the "liquid assets" of the borrowers were not supported by "supportable values" as required by the loan policy (excluding the RBC stock, the borrower's net worth was negative for both periods); (ii) there was no "demonstrated ability to repay from conversion of assets in the normal course of business or recurring cash flow from ongoing operations, plus a second identified source of repayments, as required by Sec. C-4.30 of the Loan Procedures Manual and (iii) the borrower's credit report maintained negative delinquency remarks, which the BLC failed to address.

h. The loan was charged off in full in March, 2009, given the loss of value in the RBC stock and the borrower's lack of any other means of repayment.

57. As a direct and proximate result of the Defendants' actions and inactions, RNB suffered a loss of in excess of $240,000 on Loan No. 6.

Loan #7

58. The seventh Loan Transaction to W. H. was unanimously approved by those members who voted on the issue during the BLC meeting on August 9, 2007,[9] in the amount of $700,000 ("Loan No. 7"). See Exhibit "A" incorporated herein. The purpose of the loan was to

[9] Defendant Smith abstained from voting.

fund the borrower's purchase of an interest in Southern Fulfillment Services, LLC, a gift fruit business then owned by RNB's Chairman of the Board and his wife. The collateral for Loan No. 7 was 1,598 shares of RBC stock.

59. Certain of the Defendants approved and/or permitted Loan No. 7, notwithstanding numerous, serious loan underwriting deficiencies including, without limitation, the following:

a. Loan No. 7 violated the 2006 Amended Policy in that it should have been structured as a commercial term loan, with a maximum 10 year amortization and five-year term, with a balloon payment. Instead, the loan was structured as an interest only, term loan with a two (2)-year maturity. It provided for no amortization of the loan.

b. The loan should have required a debt service minimum of 1.2 times. While the stated primary source for repayment was the combined cash flow of its four guarantors (including one related corporate guarantor), the loan documents evidence that the borrower was "illiquid" and had "no cash and no operating assets." While the loan was made to permit the borrower to purchase stock in the fruit business, the guarantors had no experience in that business and could not pledge the business' stock as collateral due to a negative pledge agreement. Accordingly, cash flow was dependent upon the future sale of RBC stock or the receipt of dividends therefrom. The secondary and tertiary repayment sources were listed as recourse upon the guarantors and liquidation of the stock. RNB's Loan Procedures Manual specifies that collateral is not a repayment mechanism and should not be shown as the primary or secondary source for payment of the loan.

c. The loan further failed to comply with the underwriting requirements for a commercial loan, in that: (i) the borrower's financial statements were incomplete and reflected insufficient cash flow to meet the Bank's debt service requirements of 1.2 times throughout the term, and (ii) there was no "demonstrated ability to repay from conversion of assets in the normal course of business or recurring cash flow from ongoing operations, plus a second identified source of repayments, as required by Sec. C-4.30 of the Loan Procedures Manual.

d. The loan matured on January 29, 2010 and given the loss of value in the RBC stock, was considered fully unsecured. The borrower entity lacked any other means of repayment.

60. As a direct and proximate result of the Defendants' actions and inactions, RNB suffered a loss of in excess of $455,000 on Loan No. 7.

Loan #8

61. The eighth Loan Transaction, made to R. W., was unanimously approved by those members present during the BLC meeting on January 17, 2008,[10] in the amount of $300,000 ("Loan No. 8"). See Exhibit "A" incorporated herein. R. W. had been a Bank customer and shareholder since its inception. The purpose of the loan was to fund investments by the borrower. The collateral for Loan No. 8 was 685 shares of RBC stock.

62. The Defendants approved and/or permitted Loan No. 8, notwithstanding numerous, serious loan underwriting deficiencies including, without limitation, the following:

a. Loan No. 8 violated the 2006 Amended Policy in that it should have been structured as a commercial term loan, with a maximum 10 year amortization and

[10] Defendant Smith, a member of the BLC, was not in attendance for this meeting. Furthermore, Defendant McCarthy was no longer with RNB at the time of this vote.

five-year term, with a balloon payment. Instead, the loan was structured as an interest only, revolving line of credit term loan with principal due upon demand. It provided for no amortization of the loan.

b. The Loan to Value ratio was greater than the amount allowed by RNB's loan policy and limits set by Regulators. The maximum amount of the loan could not exceed *the lesser of* the independent valuation of the RBC shares or 90% of the buy-back price of the shares. The loan did not comply. No independent valuation of the stock was performed or provided in the loan package.

c. Additionally, the earnings and cash flow analysis of the borrower included companies in which the borrower purportedly maintained a majority interest; however, none of the companies were guarantors or were otherwise legally obligated to repay the loan. Absent these entities, R. W.'s tax returns reflected insufficient cash flow to meet the Bank's debt service requirements of 1.2 times, as required for a revolving line of credit.

d. Moreover, (i) the "liquid assets" of the borrowers were not supported by "supportable values" as required by the loan policy; (ii) there was no "demonstrated ability to repay from conversion of assets in the normal course of business or recurring cash flow from ongoing operations, plus a second identified source of repayments, as required by Sec. C-4.30 of the Loan Procedures Manual.

63. The borrower died in 2009 and the loan matured on January 18, 2010.

64. As a direct and proximate result of the Defendants' actions and inactions, RNB suffered a loss of in excess of $240,000 on the Loan No. 8.

C. Negligent and Grossly Negligent Failures of the Defendants to Discharge Their Duties as Bank Officers and/or Directors

65. Each of the eight Loan Transactions described above contained major and material violations of RNB's Loan Policy and procedures, with underwriting deficiencies that were readily identifiable to the Defendants, yet they approved and permitted each loan.

66. Each of the Defendants failed to exercise any reasonable care in their review, evaluation, and approval of the Loan Transactions, causing losses in excess of $9 million.

67. Each of the Defendants failed to fully and properly discharge their fiduciary duties and obligations, or to exercise the degree of diligence, care, skill, and independence which ordinarily prudent individuals would exercise under similar circumstances; and each was, in fact, grossly negligent and exhibited a conscious and reckless disregard of the best interests of RNB acting or failing to act in the face of known risks.

68. Each of the Defendants failed to make certain that RNB's policies and procedures were followed, failed to ensure that prudent underwriting standards were implemented, and otherwise failed to inform themselves and each other about the true nature and condition of the Loan Transactions.

69. Each of the Defendants caused or permitted RNB to maintain inadequate loan documentation and files.

70. Each of the Defendants caused or permitted loans to be made with inadequate or inaccurate financial information regarding the creditworthiness of the borrower, the borrower's prospective source of repayment, and the borrower's security, if any; and failed to make reasonable efforts to verify the accuracy of such information.

71. Each of the Defendants failed generally to exercise their fiduciary duties to manage and supervise the affairs of RNB in a safe, sound, and prudent manner consistent with their duty to protect the assets of RNB.

72. In connection with the aforementioned acts and omissions, the Defendants, individually and collectively, made uninformed decisions without meaningful deliberation and disregarded advice and warnings from Regulators designed to assist them in their decision making.

73. The Defendants' actions and inactions displayed such an absence of care in the exercise of their affairs as to constitute gross negligence in the performance thereof, and constitute abuses of discretion, a conscious disregard for the best interests of RNB, and deviations from safe and sound banking practices.

74. The breaches of the fiduciary duties and duties of care each Defendant owed to RNB proximately caused the damages complained of herein, as measured by the Loan Transactions.

V. CLAIMS FOR RELIEF

CLAIMS AGAINST DEFENDANTS HORTON, MCGUIRE, SPROUL, AND STRICKLAND, AS OFFICERS OF RNB

Count I – Negligence Under Florida Law

75. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

76. This is an action for damages against Defendants Horton, McGuire, Sproul, and Strickland as based upon their negligence as officers under Florida law with respect to all of the Loan Transactions.

77. Defendants Horton, McGuire, Sproul, and Strickland, as officers of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which ordinarily prudent persons in like positions would exercise under similar circumstances and in a manner they reasonably believe is in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

78. By their actions and inactions, as described specifically and generally herein, Defendants Horton, McGuire, Sproul, and Strickland failed and neglected to perform their respective duties as officers of RNB, thereby breaching their duties of care owed to RNB.

79. Defendants Horton, McGuire, Sproul, and Strickland failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that their practices and the practices of other RNB officials over whom they exercised supervisory control were improper, imprudent, and harmful to RNB.

80. Defendants Horton, McGuire, Sproul, and Strickland rejected or disregarded the advice and warnings of Regulators designed to assist them in their decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

81. Defendants Horton, McGuire, Sproul, and Strickland were aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

82. Defendants Horton, McGuire, Sproul, and Strickland were aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e),

42 (a) – (f), 45 (a) – (e), 48 (a) – (f), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet the defendants approved and otherwise permitted the approval of the Loan Transactions.

83. Additionally, McGuire, during his tenure as SLO, failed to veto the loan approvals despite these transparent deficiencies.

84. As a direct and proximate result of the negligent acts and omissions of Defendants Horton, McGuire, Sproul, and Strickland, RNB suffered damage and sustained losses of at least $7.92 million, together with prejudgment interest in an amount no less than $1.14 million.

85. With respect to their actions and inactions in managing the affairs of RNB, Defendants Horton, McGuire, Sproul, and Strickland pursued a common plan or design in that management and, therefore, each Defendant is jointly and severally liable for all losses.

COUNT II – Breach of Fiduciary Duty
In the Alternative

86. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

87. The allegations in this Count are pleaded in the alternative to allegations in Count I, pursuant to Rule 8(d) (2) of the Federal Rules of Civil Procedure.

88. This is an action for damages against Defendants Horton, McGuire, Sproul, and Strickland as based upon breaches of their fiduciary duties as officers under Florida law with respect to all of the Loan Transactions.

89. Defendants Horton, McGuire, Sproul, and Strickland, as officers of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which ordinarily prudent persons in like positions would exercise under similar circumstances and in a manner they reasonably believe is in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

90. By their actions and inactions, as described specifically and generally herein, Defendants Horton, McGuire, Sproul, and Strickland failed and neglected to perform their respective duties as officers of RNB, thereby breaching their fiduciary duties owed to RNB.

91. Defendants Horton, McGuire, Sproul, and Strickland failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that their practices and the practices of other RNB officials over whom they exercised supervisory control were improper, imprudent, and harmful to RNB.

92. Defendants Horton, McGuire, Sproul, and Strickland rejected or disregarded the advice and warnings of Regulators designed to assist them in their decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

93. Defendants Horton, McGuire, Sproul, and Strickland were aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

94. Defendants Horton, McGuire, Sproul, and Strickland were aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 48 (a) – (f), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet the defendants approved and otherwise permitted the approval of the Loan Transactions.

95. Additionally, McGuire, during his tenure as SLO, failed to veto the loan approvals despite these transparent deficiencies.

96. As a direct and proximate result of the breaches of fiduciary duties of Defendants Horton, McGuire, Sproul, and Strickland, RNB suffered damage and sustained losses of at least $7.92 million, together with prejudgment interest in an amount no less than $1.14 million.

97. With respect to their actions and inactions in managing the affairs of RNB, Defendants Horton, McGuire, Sproul, and Strickland pursued a common plan or design in that management and, therefore, each Defendant is jointly and severally liable for all losses.

COUNT III – Gross Negligence Under FIRREA
In the Alternative

98. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

99. The allegations in this count are pleaded in the alternative to allegations in Counts I and II, pursuant to Rule 8(d)(2) of the Federal Rules of Civil Procedure.

100. This is an action for damages pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1821(k), *et seq.* ("FIRREA") against Defendants Horton, McGuire, Sproul, and Strickland based upon their gross negligence as an officer of RNB.

101. Section 1821(k) of FIRREA holds directors or officers of financial institutions personally liable for monetary damages in a civil action brought by the FDIC as receiver for loss or damage to the institution caused by their "gross negligence," as defined by applicable State law.

102. Gross negligence by the officers or directors of a Florida corporation is defined under Florida law as the equivalent of slight care or that course of conduct which a reasonable and prudent person would know would probably and most likely result in injury to person or

property. Gross negligence exists where, as here, the Defendants failed to take appropriate action in the face of known risks.

103. Defendants Horton, McGuire, Sproul, and Strickland's acts and inactions amounted to a willful, knowing, and conscious failure to use reasonable care in carrying out their duties to RNB.

104. Defendants Horton, McGuire, Sproul, and Strickland failed to adhere to lending policies, applicable underwriting requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that their practices and the practices of other RNB officials over whom they exercised supervisory control, were improper, imprudent, and harmful to RNB.

105. Defendants Horton, McGuire, Sproul, and Strickland rejected or disregarded the advice and warnings of Regulators designed to assist them in their decision-making with respect to RNB's lending policies.

106. Defendants Horton, McGuire, Sproul, and Strickland were aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

107. Defendants Horton, McGuire, Sproul, and Strickland were aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 48 (a) – (f), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet the Defendants approved and otherwise permitted the approval of the Loan Transactions.

108. Additionally, McGuire, during his tenure as SLO, failed to veto the loan approvals despite these transparent deficiencies.

109. As a direct and proximate result of the negligent acts and omissions of Defendants Horton, McGuire, Sproul, and Strickland, RNB suffered damage and sustained losses of at least $7.92 million, together with prejudgment interest in an amount no less than $1.14 million.

110. With respect to their actions and inactions in managing the affairs of RNB, Defendants Horton, McGuire, Sproul, and Strickland pursued a common plan or design in that management and, therefore, each is jointly and severally liable for all losses.

CLAIMS AGAINST DEFENDANT WILLIAMS, AS OFFICER OF RNB

Count IV – Negligence Under Florida Law

111. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

112. This is an action for damages against Defendant Williams as based upon his negligence as an officer under Florida law with respect to the following Loan Transactions: Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

113. Defendant Williams, as an officer of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believed to be in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

114. By his actions and inactions, as described specifically and generally herein, Defendant Williams failed and neglected to perform his duties as an officer of RNB, thereby breaching his duty of care owed to RNB.

115. Defendant Williams failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of

reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control were improper, imprudent, and harmful to RNB.

116. Defendant Williams rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

117. Defendant Williams was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

118. Defendant Williams was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he approved, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet he approved and otherwise permitted the approval of Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

119. As a direct and proximate result of the negligent acts and omissions of Defendant Williams, RNB suffered damage and sustained losses of at least $7.19 million, together with prejudgment interest in an amount no less than $1.03 million.

COUNT V – Breach of Fiduciary Duty
In the Alternative

120. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

121. The allegations in this count are pleaded in the alternative to allegations in Count IV, pursuant to Rule 8(d)(2) of the Federal Rules of Civil Procedure.

122. This is an action for damages against Defendant Williams as based upon his breaches of fiduciary duty as an officer under Florida law with respect to the following Loan Transactions: Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

123. Defendant Williams, as an officer of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believed to be in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

124. By his actions and inactions, as described specifically and generally herein, Defendant Williams failed and neglected to perform his duties as an officer of RNB, thereby breaching his fiduciary duties owed to RNB.

125. Defendant Williams failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control were improper, imprudent, and harmful to RNB.

126. Defendant Williams rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

127. Defendant Williams was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

128. Defendant Williams was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he

approved, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet he approved and otherwise permitted the approval of Loan No. 1 Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

129. As a direct and proximate result of Defendant Williams' breaches of his fiduciary duties, RNB suffered damage and sustained losses of at least $7.19 million, together with prejudgment interest in an amount no less than $1.03 million.

COUNT VI – Gross Negligence Under FIRREA
In the Alternative

130. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

131. The allegations in this count are pleaded in the alternative to allegations in Counts IV and V, pursuant to Rule 8(d) (2) of the Federal Rules of Civil Procedure.

132. This is an action for damages pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1821(k), *et seq.* ("FIRREA") against Williams based upon his gross negligence as an officer of RNB.

133. Section 1821(k) of FIRREA holds directors or officers of financial institutions personally liable for monetary damages in a civil action brought by the FDIC as receiver for loss or damage to the institution caused by their "gross negligence," as defined by applicable State law.

134. Gross negligence by the officers or directors of a Florida corporation is defined under Florida law as the equivalent of slight care or that course of conduct which a reasonable and prudent person would know would probably and most likely result in injury to person or

property. Gross negligence exists where, as here, the Defendant failed to take appropriate action in the face of known risks.

135. Defendant Williams' acts and inactions amounted to a willful, knowing, and conscious failure to use reasonable care in carrying out their duties to RNB.

136. Defendant Williams failed to adhere to lending policies, applicable underwriting requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control, were improper, imprudent, and harmful to RNB.

137. Defendant Williams rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies.

138. Defendant Williams was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

139. Defendant Williams was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he approved, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet the Defendant approved and otherwise permitted the approval of Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

140. As a direct and proximate result of the negligent acts and omissions of Defendant Williams, RNB suffered damage and sustained losses of at least $7.19 million, together with prejudgment interest in an amount no less than $1.03 million.

CLAIMS AGAINST DEFENDANT MCCARTHY, AS OFFICER OF RNB

Count VII – Negligence Under Florida Law

141. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

142. This is an action for damages against Defendant McCarthy as based upon his negligence as an officer under Florida law with respect to the following Loan Transactions: Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, and Loan No. 7.

143. Defendant McCarthy, as an officer of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believed to be in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

144. By his actions and inactions, as described specifically and generally herein, Defendant McCarthy failed and neglected to perform his duties as an officer of RNB, thereby breaching his duty of care owed to RNB.

145. Defendant McCarthy failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control were improper, imprudent, and harmful to RNB.

146. Defendant McCarthy rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

147. Defendant McCarthy was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

148. Defendant McCarthy was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he approved, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 52 (a) – (f), 56 (a) – (h), and 59 (a) – (d); yet he approved and otherwise permitted the approval of Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, and Loan No. 7.

149. Additionally, McCarthy, during his tenure as SCO, failed to veto the loan approvals despite these transparent deficiencies.

150. As a direct and proximate result of the negligent acts and omissions of Defendant McCarthy, RNB suffered damage and sustained losses of at least $6.95 million, together with prejudgment interest in an amount no less than $1 million.

COUNT VIII – Breach of Fiduciary Duty
In the Alternative

151. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

152. The allegations in this count are pleaded in the alternative to allegations in Count VII, pursuant to Rule 8(d)(2) of the Federal Rules of Civil Procedure

153. This is an action for damages against Defendant McCarthy as based upon breaches of his fiduciary duties as an officer under Florida law with respect to the following Loan Transactions: Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, and the Loan No. 7.

154. Defendant McCarthy, as an officer of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believed to be in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

155. By his actions and inactions, as described specifically and generally herein, Defendant McCarthy failed and neglected to perform his duties as an officer of RNB, thereby breaching his fiduciary duties owed to RNB.

156. Defendant McCarthy failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control were improper, imprudent, and harmful to RNB.

157. Defendant McCarthy rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

158. Defendant McCarthy was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

159. Defendant McCarthy was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he approved, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 52 (a) – (f), 56 (a) – (h), and 59 (a) – (d); yet he approved and otherwise permitted the approval of Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, and Loan No. 7.

160. Additionally, McCarthy, during his tenure as SCO, failed to veto the loan approvals despite these transparent deficiencies.

161. As a direct and proximate result of the breaches Defendant McCarthy's breaches of his fiduciary duties, RNB suffered damage and sustained losses of at least $6.95 million, together with prejudgment interest in an amount no less than $1 million.

COUNT IX – Gross Negligence Under FIRREA
In the Alternative

162. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

163. This is an action for damages pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1821(k), *et seq.* ("FIRREA") against McCarthy based upon his gross negligence as an officer of RNB.

164. The allegations in this count are pleaded in the alternative to allegations in Count VII and VIII, pursuant to Rule 8(d)(2) of the Federal Rules of Civil Procedure.

165. Section 1821(k) of FIRREA holds directors or officers of financial institutions personally liable for monetary damages in a civil action brought by the FDIC as receiver for loss or damage to the institution caused by their "gross negligence," as defined by applicable State law.

166. Gross negligence by the officers or directors of a Florida corporation is defined under Florida law as the equivalent of slight care or that course of conduct which a reasonable and prudent person would know would probably and most likely result in injury to person or property. Gross negligence exists where, as here, the Defendant failed to take appropriate action in the face of known risks.

167. Defendant McCarthy's acts and inactions amounted to a willful, knowing, and conscious failure to use reasonable care in carrying out their duties to RNB.

168. Defendant McCarthy failed to adhere to lending policies, applicable underwriting requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control, were improper, imprudent, and harmful to RNB.

169. Defendant McCarthy rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies.

170. Defendant McCarthy was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

171. Defendant McCarthy was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he approved, including without limitation the deficiencies set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 52 (a) – (f), 56 (a) – (h), and 59 (a) – (d); yet the Defendant approved and otherwise permitted the approval of Loan No. 1, Loan No. 2, Loan No. 3, Loan No. 5, Loan No. 6, and Loan No. 7.

172. Additionally, McCarthy, during his tenure as SCO, failed to veto the loan approvals despite these transparent deficiencies.

173. As a direct and proximate result of the negligent acts and omissions of Defendant McCarthy, RNB suffered damage and sustained losses of at least $6.95 million, together with prejudgment interest in an amount no less than $1 million.

CLAIMS AGAINST DEFENDANT ROBBINS, AS OFFICER OF RNB

Count X – Negligence Under Florida Law

174. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

175. This is an action for damages against Defendant Robbins as based upon her negligence as an officer and director under Florida law with respect to the following Loan Transactions: Loan No. 2, Loan No. 4, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

176. Defendant Robbins, as an officer of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner she reasonably believed to be in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

177. By her actions and inactions, as described specifically and generally herein, Defendant Robbins failed and neglected to perform her duties as an officer of RNB, thereby breaching her duty of care owed to RNB.

178. Defendant Robbins failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that her practices and the practices of other RNB officials over whom she exercised supervisory control were improper, imprudent, and harmful to RNB.

179. Defendant Robbins rejected or disregarded the advice and warnings of Regulators designed to assist her in her decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

180. Defendant Robbins was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

181. Defendant Robbins was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions she approved, including without limitation the deficiencies set forth in ¶¶ 42 (a) – (f), 48(a) – (f), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet she approved and otherwise permitted the approval of Loan No. 2, Loan No. 4, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

182. Additionally, Robbins, during her tenure as COO, failed to veto the loan approvals despite these transparent deficiencies.

183. As a direct and proximate result of the negligent acts and omissions of Defendant Robbins, RNB suffered damage and sustained losses of at least $4.76 million, together with prejudgment interest in an amount no less than $.67 million.

COUNT XI – Breach of Fiduciary Duty
In the Alternative

184. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

185. The allegations in this count are pleaded in the alternative to allegations in Count X, pursuant to Rule 8(d)(2) of the Federal Rules of Civil Procedure.

186. This is an action for damages against Defendant Robbins as based upon breaches of her fiduciary duties as an officer and director under Florida law with respect to the following Loan Transactions: Loan No. 2, Loan No. 4, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

187. Defendant Robbins, as an officer of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner she reasonably believed to be in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

188. By her actions and inactions, as described specifically and generally herein, Defendant Robbins failed and neglected to perform her duties as an officer of RNB, thereby breaching her fiduciary duties owed to RNB.

189. Defendant Robbins failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that her practices and the practices of other RNB officials over whom she exercised supervisory control were improper, imprudent, and harmful to RNB.

190. Defendant Robbins rejected or disregarded the advice and warnings of Regulators designed to assist her in her decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

191. Defendant Robbins was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

192. Defendant Robbins was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions she approved, including without limitation the deficiencies set forth in ¶¶ 42 (a) – (f), 48(a) – (f), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet she approved and otherwise permitted the approval of Loan No. 2, Loan No. 4, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

193. Additionally, Robbins, during her tenure as COO, failed to veto the loan approvals despite these transparent deficiencies.

194. As a direct and proximate result of the of Defendant Robbins' breaches of her fiduciary duties, RNB suffered damage and sustained losses of at least $4.76 million, together with prejudgment interest in an amount no less than $.67 million.

COUNT XII – Gross Negligence Under FIRREA
In the Alternative

195. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

196. This is an action for damages pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1821(k), *et seq.* ("FIRREA") against Williams based upon his gross negligence as an officer and director of RNB.

197. The allegations in this count are pleaded in the alternative to allegations in Count X and XI, pursuant to Rule 8(d)(2) of the Federal Rules of Civil Procedure.

198. Section 1821(k) of FIRREA holds directors or officers of financial institutions personally liable for monetary damages in a civil action brought by the FDIC as receiver for loss or damage to the institution caused by their "gross negligence," as defined by applicable State law.

199. Gross negligence by the officers or directors of a Florida corporation is defined under Florida law as the equivalent of slight care or that course of conduct which a reasonable and prudent person would know would probably and most likely result in injury to person or property. Gross negligence exists where, as here, the Defendant failed to take appropriate action in the face of known risks.

200. Defendant Robbins' acts and inactions amounted to a willful, knowing, and conscious failure to use reasonable care in carrying out her duties to RNB.

201. Defendant Robbins failed to adhere to lending policies, applicable underwriting requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that her practices and the practices of other RNB officials over whom he exercised supervisory control, were improper, imprudent, and harmful to RNB.

202. Defendant Robbins rejected or disregarded the advice and warnings of Regulators designed to assist her in his decision-making with respect to RNB's lending policies.

203. Defendant Robbins was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

204. Defendant Robbins was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions she approved, including without limitation the deficiencies set forth in ¶¶ 42 (a) – (f), 48(a) – (f), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62(a) – (d); yet the Defendant approved and otherwise permitted the approval of Loan No. 2, Loan No. 5, Loan No. 6, Loan No. 7, and Loan No. 8.

205. Additionally, Robbins, during her tenure as COO, failed to veto the loan approvals despite these transparent deficiencies.

206. As a direct and proximate result of the negligent acts and omissions of Defendant Robbins, RNB suffered damage and sustained losses of at least $4.76 million, together with prejudgment interest in an amount no less than $.67 million.

CLAIMS AGAINST DEFENDANT SMITH, AS OFFICER OF RNB
Count XIII – Negligence Under Florida Law

207. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

208. This is an action for damages against Defendant Smith as based upon his negligence as an officer under Florida law with respect to the following Loan Transactions: the Loan No. 5 and the Loan No. 6.

209. Defendant Smith, as an officer of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believed to be in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

210. By his actions and inactions, as described specifically and generally herein, Defendant Smith failed and neglected to perform his duties as an officer of RNB, thereby breaching his duty of care owed to RNB.

211. Defendant Smith failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control were improper, imprudent, and harmful to RNB.

212. Defendant Smith rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

213. Defendant Smith was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

214. Defendant Smith was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he approved, including without limitation the deficiencies set forth in ¶¶ 52 (a) – (f) and 56 (a) – (h); yet he approved and otherwise permitted the approval of Loan No. 5 and Loan No. 6.

215. Additionally, Smith, during his tenure as CEO, failed to veto the loan approvals despite these transparent deficiencies.

216. As a direct and proximate result of the negligent acts and omissions of Defendant Smith, RNB suffered damage and sustained losses of at least $3.76 million, together with prejudgment interest in an amount no less than $.54 million.

COUNT XIV – Breach of Fiduciary Duty
In the Alternative

217. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

218. The allegations in this count are pleaded in the alternative to allegations in Count XIII, pursuant to Rule 8(d)(2) of the Federal Rules of Civil Procedure.

219. This is an action for damages against Defendant Smith as based upon breaches of his fiduciary duties as an officer under Florida law with respect to the following Loan Transactions: Loan No. 5 and Loan No. 6.

220. Defendant Smith, as an officer of RNB, owed RNB the obligation to exercise the degree of diligence, care, and skill which an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believed to be in the best interests of RNB in the management, supervision, and conduct of RNB's business and financial affairs, including its lending practices.

221. By his actions and inactions, as described specifically and generally herein, Defendant Smith failed and neglected to perform his duties as an officer of RNB, thereby breaching his fiduciary duties owed to RNB.

222. Defendant Smith failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control were improper, imprudent, and harmful to RNB.

223. Defendant Smith rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

224. Defendant Smith was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

225. Defendant Smith was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he approved, including without limitation the deficiencies set forth in ¶¶ ¶¶ 52 (a) – (f) and 56 (a) – (h); yet he approved and otherwise permitted the approval of Loan No. 5 and Loan No. 6.

226. Additionally, Smith, during his tenure as CEO, failed to veto the loan approvals despite these transparent deficiencies.

227. As a direct and proximate result of the of Defendant Smith's breaches of his fiduciary duties, RNB suffered damage and sustained losses of at least $3.76 million, together with prejudgment interest in an amount no less than $.54 million.

COUNT XV – Gross Negligence Under FIRREA
In the Alternative

228. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

229. The allegations in this count are pleaded in the alternative to allegations in Count XIII and XIV, pursuant to Rule 8(d) (2) of the Federal Rules of Civil Procedure.

230. This is an action for damages pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1821(k), *et seq.* ("FIRREA") against Smith based upon his gross negligence as an officer and director of RNB.

231. Section 1821(k) of FIRREA holds directors or officers of financial institutions personally liable for monetary damages in a civil action brought by the FDIC as receiver for loss or damage to the institution caused by their "gross negligence," as defined by applicable State law.

232. Gross negligence by the officers or directors of a Florida corporation is defined under Florida law as the equivalent of slight care or that course of conduct which a reasonable and prudent person would know would probably and most likely result in injury to person or property. Gross negligence exists where, as here, the Defendant failed to take appropriate action in the face of known risks.

233. Defendant Smith's acts and inactions amounted to a willful, knowing, and conscious failure to use reasonable care in carrying out his duties to RNB.

234. Defendant Smith failed to adhere to lending policies, applicable underwriting requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of other RNB officials over whom he exercised supervisory control, were improper, imprudent, and harmful to RNB.

235. Defendant Smith rejected or disregarded the advice and warnings of Regulators designed to assist him in his decision-making with respect to RNB's lending policies.

236. Defendant Smith was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures.

237. Defendant Smith was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions he approved, including without limitation the deficiencies set forth in ¶¶ 52 (a) – (f) and 56 (a) – (h); yet the Defendant approved and otherwise permitted the approval of Loan No. 5 and Loan No. 6.

238. Additionally, Smith, during his tenure as CEO, failed to veto the loan approvals despite these transparent deficiencies.

239. As a direct and proximate result of the negligent acts and omissions of Defendant Smith, RNB suffered damage and sustained losses of at least $3.76 million, together with prejudgment interest in an amount no less than $.54 million.

COUNT AGAINST DEFENDANT SMITH AS DIRECTOR OF RNB
Count XVI – Gross Negligence Under FIRREA

240. The FDIC incorporates by reference each of the allegations in Paragraphs 1 through 74 of this Complaint.

241. This is an action for damages pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1821(k), *et seq.* ("FIRREA") against Defendant Smith based upon his gross negligence as director of RNB.

242. Section 1821(k) of FIRREA holds directors of financial institutions personally liable for monetary damages in a civil action brought by the FDIC as receiver for loss or damage to the institution caused by their "gross negligence," as defined by applicable State law.

243. Gross negligence by the directors of a Florida corporation is defined under Florida law as the equivalent of slight care or that course of conduct which a reasonable and prudent person would know would probably and most likely result in injury to person or property. Gross negligence exists where, as here, the defendants failed to take appropriate action in the face of known risks.

244. Under § 5.20 the Directors Loan Committee, composed of three outside Board members plus the CEO, COO, SCO and the SLO were responsible *inter alia* to:

a. Approve loans as outlined in the Approval section of the Loan Policy.

b. Approve exception levels.

c. Review reports prepared by Loan Review.

245. Pursuant to Section 1.40 of the Bank's Loan Policy governing variances to procedures, variances in the approval of loans are appropriate only if the incremental risk is adequately mitigated and approved by the next higher level of authority. Thus, the variances in the Loan Transactions should have been approved by the RNB Board of Directors prior to funding. This did not occur.

246. Defendant Smith failed to adhere to lending policies, applicable requirements, and sound lending practices, and thus knew, or should have known through the exercise of reasonable diligence, that his practices and the practices of RNB officials over whom he exercised supervisory control were improper, imprudent, and harmful to RNB.

247. Defendant Smith failed to ensure that the Loan Transactions were underwritten in a safe and sound manner prior to approval; failed to ensure that the Loan Transactions did not violate applicable banking regulations or create an unsound concentration of credit; failed to ensure that the Loan Transactions were approved in compliance with RNB's policies and procedures. Defendant Smith rejected or disregarded the advice and warnings of Regulators

designed to assist them in their decision-making with respect to RNB's lending policies, particularly with respect to loans secured by RBC and RNB affiliates' stock.

248. Defendants Smith was aware of, or in the exercise of reasonable diligence should have been aware of, significant weaknesses in RNB's underwriting practices and procedures. He was aware of, or in the exercise of reasonable diligence should have been aware of, the substantial deficiencies exhibited by the Loan Transactions, including those set forth in ¶¶ 39(a) – (e), 42 (a) – (f), 45 (a) – (e), 48 (a) – (f), 52 (a) – (f), 56 (a) – (h), 59 (a) – (d), and 62 (a—d) ; yet he permitted the approval of the Loan Transactions.

249. Smith did not veto the Loan Transactions, permitting them to be made despite their transparent deficiencies. He also failed to ensure that these variances in the Loan Transactions were approved by the RNB Board of Directors prior to funding.

250. As a direct and proximate result of the negligent acts and omissions of Defendant Smith, RNB suffered damage and sustained losses of at least $7.92 million together with pre-judgment interest in an amount no less than $1.14 million.

VI. PRAYER FOR RELIEF

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

2. On Counts I through XVI, the FDIC requests judgment against all Defendants, jointly and severally, in sums to be proven at trial, together with appropriate interest pursuant to 12 USC § 1821(1), the costs of this action, and such other and further relief as the Court deems just and proper.

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Respectfully submitted this 15th day of April, 2013.

By: _____

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