

**#2000-61**

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

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**In the Matter of:** )  
James J. Marron )  
Teller )  
Bank of America )  
San Francisco, California )

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**STIPULATION AND CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) intends to initiate removal and cease and desist proceedings against James J. Marron (Respondent) pursuant to 12 U.S.C. §§ 1818(b) and (e) (as amended); and

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order (Order);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

## Article I

### JURISDICTION

(1) Bank of America (Bank) is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 et seq. Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was a teller for the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof (see 12 U.S.C. § 1818(i)(3)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain removal and cease and desist proceedings against him pursuant to 12 U.S.C. §§ 1818(b) and (e).

## Article II

### PROHIBITION AND REMOVAL

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, and without admitting or denying any wrongdoing, Respondent hereby agrees that he shall not:

(a) participate in any manner in the conduct of their affairs;

- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
  - (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q) (as amended);  
or
  - (d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u) (as amended).
- (2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:
- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
  - (b) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9) (as amended);
  - (c) any insured credit union under the Federal Credit Union Act;
  - (d) any institution chartered under the Farm Credit Act of 1971;
  - (e) any appropriate Federal depository institution regulatory agency; and
  - (f) the Federal Housing Finance Board and any Federal Home Loan Bank.
- (3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the Comptroller and the institution's “appropriate Federal financial institutions regulatory agency,” as defined in 12 U.S.C. § 1818(e)(7)(D) (as amended).

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(e), (i), (j), and (h) (as amended).

### Article III

#### CEASE AND DESIST ORDER FOR RESTITUTION

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of restitution to the Bank in the amount of seven thousand nine hundred and fifteen dollars (\$7,915). The restitution shall be paid in full over four (4) years in the amount of one hundred and sixty-five dollars (\$165) per month, due on the fifteenth (15<sup>th</sup>) day of each month for a period of forty-seven (47) months, and in the amount of one hundred sixty dollars (\$160) in the forty-eighth (48<sup>th</sup>) month.

- (a) Respondent shall make payment in accordance with the above payment plan by check made payable to Bank of America with case number 90212-074610 referenced on the memo line of each check. The checks shall be delivered to Donald L. Meyer, Bank of America, 333 South Beaudry Avenue, Los Angeles, California 90017 ATTN: CA9-703-27-05.
- (b) Respondent shall deliver a copy of each check to Kristin Merritt, Enforcement & Compliance Division, Office of the Comptroller of the Currency, Mail Stop 8-10, 250 E Street, S.W., Washington, D.C. 20219.

(c) If Respondent fails to make any payment as provided in this paragraph, the entire balance of the restitution amount described in this paragraph shall become immediately due and payable.

(2) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818 (b), (h) or (i) (as amended).

#### Article IV

##### NOTICE OF ADDRESS TO OCC

(1) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division (Director) of his current address on the form attached hereto as Appendix A. Until the restitution is paid in full, upon each and every subsequent change in address, if any, Respondent shall notify the Director of his new address within seven (7) days of such change in address.

#### Article V

##### BANKRUPTCY

(1) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay restitution pursuant to this Order is subject to discharge, Respondent will in no manner contest the Comptroller's assertion, pursuant to 11 U.S.C. § 523(a)(11) or otherwise, that the restitution obligation in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

## Article VI

### WAIVERS

- (1) By executing this Order, Respondent waives:
  - (a) the right to the issuance of Notice(s) under 12 U.S.C. §§ 1818(b) and (e);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (e) and 12 C.F.R. Part 19;
  - (c) all rights to seek judicial review of this Order;
  - (d) all rights in any way to contest the validity of this Order;
  - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
  - (f) all rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.
- (2) Respondent shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of restitution under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order; and, in accordance with 12 C.F.R. § 7.2014, Respondent shall not, directly or indirectly, obtain or accept any

indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of the removal and cease and desist proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations, unless such acts, omissions, or violations reoccur.

(5) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(6) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/

06-28-00

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Leann G. Britton  
Senior Deputy Comptroller  
for Bank Supervision Operations

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Date

/s/

06-18-00

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James J. Marron

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Date