

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

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**In the Matter of:** )  
John H. O'Neal, Jr. )  
Former President, CEO and Director ) OCC-AA-EC-00-52  
First National Bank of Lucedale )  
Lucedale, Mississippi )

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**STIPULATION AND CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America ("Comptroller") has initiated cease and desist proceedings against John H. O'Neal, Jr. ("Respondent") former President, CEO and Director of the First National Bank of Lucedale, Lucedale, Mississippi, ("Bank") pursuant to 12 U.S.C. § 1818(b) through the issuance of a Notice of Charges and Hearing for an Order to Cease and Desist for Restitution and Other Relief dated February 15, 2001, ("Notice") and is contemplating the initiation of civil money penalty proceedings against Respondent pursuant to 12 U.S.C. § 1818(i) (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) First National Bank of Lucedale ("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 is the Former President, CEO and Director of 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 cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b) and (i).

## Article II

### FINDINGS OF FACT

The OCC makes the following findings of fact, which findings Respondent neither

admits nor denies:

(1) Beginning sometime in 1997, and continuing thereafter as described herein, contrary to safe and sound banking practices, and in breach of his fiduciary duty, Respondent knowingly or recklessly approved overdrafts and issued unauthorized letters of credit in connection with the Bank's largest criticized borrower.

(2) Respondent knowingly or recklessly approved overdrafts on deposit accounts of the Bank's largest criticized borrower that was paying approximately \$2,050 per week to a company in which Respondent was an undisclosed 50% owner with his brother. The loss to the Bank as a result of Respondent's approval of the overdrafts is approximately one hundred sixty-two thousand dollars (\$162,000).

(3) Respondent, without authorization, issued on behalf of the Bank, at least ten (10) letters of credit totaling five hundred fifty-five thousand dollars (\$555,000).

(4) Respondent failed to obtain the requisite approval from the Bank's Board of Directors prior to issuing the letters of credit; failed to place any of the letters of credit in the Bank's letter of credit register; failed to list the letters of credit as contingent obligations in the Bank's accounts; and failed to otherwise include the letters of credit in the Bank's books and records.

(5) On or about July 14, 2000, Respondent met with the President of another troubled borrower to discuss overdrafts on the company's deposit account at the Bank. At that time, Respondent learned that the company intended to prepare and submit a fictitious invoice to the Bank for purposes of covering the overdraft balance in the company's deposit account.

(6) On or about July 15, 2000, the company prepared and submitted a fictitious

invoice to the Bank in the amount of one hundred forty thousand dollars (\$140,000), at which time the Bank granted immediate credit to and applied funds against a one hundred six thousand dollar (\$106,000) overdraft in the company's deposit account at the Bank. At no time did Respondent advise the Bank's Board of Directors of the fictitious nature of the invoice, or take any action to protect the interests of the Bank. The loss to the Bank as a result of Respondent's acceptance of the fictitious invoice is estimated to be approximately one hundred twelve thousand dollars (\$112,000).

(7) Beginning sometime in 1995, and continuing through on or about September 20, 2000, contrary to safe and sound banking practices and in breach of his fiduciary duties, Respondent knowingly or recklessly caused or permitted Bank-issued credit cards intended for Respondent's Bank-related expenses to be used for the purchase of personal items and personal expenses for himself and members of his family. These personal expenses totaled approximately twenty-five thousand, six hundred forty-seven dollars and fifty-six cents (\$25,647.56), and included such personal items as clothing, hunting equipment, lingerie, designer sportswear, jewelry, collectibles, massages, personal hygiene products, and other personal items and expenses.

(8) Beginning sometime in February 1999, and continuing through on or about September 2000, without authorization and in breach of his fiduciary duties, Respondent knowingly or recklessly caused or permitted Bank-issued cellular telephones and two-way radio equipment to be used for the personal benefit of members of his family and customers of the Bank. The total charges resulting from the use of the cell phones and radio equipment is approximately ten thousand, three hundred eighty-eight dollars and sixty-nine cents

(\$10,388.69).

(9) Beginning sometime in January 1999, and continuing through on or about August 2000, without authorization and in breach of his fiduciary duties, Respondent knowingly and recklessly caused or permitted the Bank to pay cellular telephone expenses incurred by a Bank customer and borrower. The improper payments of these telephone charges total approximately sixteen thousand, six hundred fifty-one dollars and forty-nine cents (\$16,651.49).

(10) As a result of Respondent's unauthorized acts and breaches of fiduciary duties as detailed above, approximately eight hundred eighty-one thousand, six hundred eighty-seven dollars and seventy-four cents (\$881,687.74) has been identified in loss and improper expenses incurred or likely to be incurred.

### 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 three hundred twenty-six thousand, six hundred eighty-seven dollars and seventy-four cents (\$326,687.74), which shall be paid within thirty (30) days of execution of this Order.

(a) Respondent shall make payment in full by certified check or money order made payable to "First National Bank of Lucedale." The certified check or money order shall be delivered to: President, First

National Bank of Lucedale, 5110 Main Street, Lucedale, Mississippi  
39452.

(b) Respondent shall deliver a copy of the check or money order to: Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E St., S.W., Washington, D.C. 20219; and

(c) If Respondent fails to make the payment as provided in this Article, the entire balance of the restitution amount ordered to be paid in this Article 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

##### ORDER OF CIVIL MONEY PENALTY

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of one hundred fifty thousand dollars (\$150,000). Respondent shall pay this civil money penalty according to the procedure and schedule set out in the Order.

(a) Upon execution of this Order, Respondent shall pay fifty thousand dollars (\$50,000);

(b) On or before April 15, 2002, Respondent shall make a minimum payment in the amount of fifty thousand dollars (\$50,000);

(c) On or before April 15, 2003, Respondent shall make a final payment in the amount of fifty thousand dollars (\$50,000);

(d) Respondent shall make all payments due in connection with this Article by certified check or money order made payable to the Treasurer of the United States and deliver it to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. The docket number of this case should be entered on all checks; and

(e) Respondent shall deliver a copy of each certified check or money order to the Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

(2) If Respondent fails to make any payment as required by Paragraph #1 of this Article, the entire balance of the civil money penalty amount ordered to be paid in this Article shall become immediately due and payable.

(3) 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(h) and (i) (as amended).

## Article V

### ORDER OF GUARANTEE AGAINST FUTURE LOSS

(1) Without admitting or denying any wrongdoing, Respondent shall provide a guarantee against future loss for all payments due on the letters of credit identified in the

Guarantee Agreement attached hereto as Attachment A. On or before the issuance of this order, Respondent shall execute the attached Guarantee Agreement.

(2) The attached Guarantee Agreement, as fully executed and delivered, is and shall be incorporated herein by reference and, in addition to the remedies set forth in the Guarantee Agreement, shall be enforceable by the Comptroller as a term of this Order pursuant to 12 U.S.C. § 1818(b)(6) as though fully set forth in this Order.

(3) The OCC and Respondent further agree that any amounts hereinafter recovered from parties other than Respondent relating to the aforementioned transactions described in Article II shall be credited against the amount guaranteed by Respondent in the Order and further described in the attached Guarantee Agreement. For purposes of this Order, the term "recovered" shall mean the Bank's receipt of payment.

## Article VI

### 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 civil money penalty is paid in full, and the guarantee against loss is fully satisfied and discharged, 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 VII

### BANKRUPTCY

(1) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay the agreed upon restitution and civil money penalty and to provide guarantee against future loss, and/or Respondent's compliance with the Guaranty Agreement, 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)(7), (a)(11) or otherwise, that the foregoing obligations arise out of acts which result in claims not dischargeable in bankruptcy.

## Article VIII

### WAIVERS

- (1) By executing this Order, Respondent waives:
- (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (i) and 12 C.F.R. Part 19;
  - (b) all rights to seek judicial review of this Order;
  - (c) all rights in any way to contest the validity of this Order;
  - (d) 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

(e) 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 the restitution and civil money penalty 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 Stipulation.

## Article IX

### RELEASE OF CLAIMS

(1) It is hereby agreed that the provisions of this Order constitute a settlement of the cease and desist and civil money penalty proceedings contemplated by the

Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations contained in the Notice dated February 15, 2001, unless such acts, omissions, or violations reoccur.

(2) 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.

(3) 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.

-Signed-

11-12-01

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Leann G. Britton  
Senior Deputy Comptroller  
for Bank Supervision Operations

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Date

-Signed-

Sept. 9, 2001

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John H. O'Neal, Jr.

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Date

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**ACKNOWLEDGEMENT**

State of Mississippi County of Harrison

On this 10th day of Sept., 2001, before me, the undersigned notary public, personally appeared John H. O'Neal, Jr. who is personally known by me or who has produced \_\_\_\_\_ as identification, and acknowledged his execution of the foregoing Stipulation and Consent Order.

Julie B. Savell  
Notary Public

**My Commission Expires: 7/12/04**

