

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

---

**In the Matter of:** )  
**WENDI SMITH-KIRK,** )  
Former Branch Manager, )  
Wells Fargo Bank, N.A. )  
San Francisco, CA )

---

**STIPULATION AND CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) intends to initiate an action against Wendi Smith-Kirk for affirmative relief to provide notice of this action to any insured depository with which Smith-Kirk may seek to become associated, pursuant to 12 U.S.C. § 1818(b)(6)(F); 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 Smith-Kirk desire to enter into this Stipulation and Consent Order (Order);

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

**Article I  
Jurisdiction**

(1) Wells Fargo Bank, National Association, San Francisco, California (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) Smith-Kirk was an employee of the Bank who, until April 6, 2001, worked as a Branch Manager of the Bank in Portland, Oregon, 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, Smith-Kirk is subject to the authority of the Comptroller to initiate and maintain proceedings against her to obtain the affirmative relief of providing notice of this Order to any insured depository institution in certain circumstances, pursuant to 12 U.S.C. §§ 1818(b)(6)(F).

## **Article II Alleged Acts Resulting in Loss**

(1) The Comptroller alleges, and Smith-Kirk neither admits nor denies that, on or about March 9, 2001, Smith-Kirk improperly affixed her own thumbprint on a check that had been presented for payment by a non-customer of the Bank, under the following circumstances:

(a) The Bank’s policy was that, prior to employees’ cashing a check for a non-customer, the non-customer’s thumbprint was required to be obtained and placed on the check.

(b) Smith-Kirk’s subordinate teller cashed a check for a non-customer without obtaining the non-customer’s thumbprint. The check was then shown to Smith-Kirk, who placed her own thumbprint on it.

(c) The check was discovered to have been altered and the Bank incurred a loss on the cashing of the check.

(d) Smith-Kirk, in connection with the Bank’s investigation of this matter, admitted she placed her thumbprint on the check.

(d) The Bank terminated Smith-Kirk on April 6, 2001, because of this act by

Smith-Kirk.

(e) Smith-Kirk's act of placing her own thumbprint on the check was for the purpose of concealing from the Bank the act of her subordinate of failing to obtain the non-customer presenter's thumbprint.

(f) Smith-Kirk's act is an unsafe and unsound practice.

**Article III**  
**Required Notice for Certain Future Association**

(1) Without admitting or denying any wrongdoing, Smith-Kirk hereby consents to take the following affirmative step, pursuant to 12 U.S.C. § 1818(b)(6)(F): If Smith-Kirk ever seeks, or is offered, a position as an institution-affiliated party, as defined by 12 U.S.C. § 1813(u), with respect to any insured depository institution, she shall, prior to accepting such position, disclose to such institution the existence of this Order and provide such institution with a complete copy of the Order, which consists of six pages.

(2) The term "insured depository institution" specified in paragraph (1) of this Article applies to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c), or any subsidiary of such institution;
- (b) any institution treated as an insured bank under 12 U.S.C. §§ 1813(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) Smith-Kirk's possible association as an "institution-affiliated party" with an "insured depository institution," as specified in paragraph (1) of this Article, means that, with respect to the institutions and agencies set forth in paragraph (2) of this Article, she hereby agrees that she shall provide the notice specified in paragraph (1) in connection with her possible association as:

(a) director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;

(b) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under 12 U.S.C. § 1817(j);

(c) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case by-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(d) any independent contractor (including any attorney, appraiser, or accountant).

(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(i), (j), and (h) (as amended).

#### **Article IV Waivers**

(1) By executing this Order, Smith-Kirk waives:

(a) the right to the issuance of a notice of charges under 12 U.S.C. § 1818(b);

(b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b)

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 acts which form the basis for issuance of this Order.

(2) Smith-Kirk shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, 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, she 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) It is hereby agreed that the provisions of this Order constitute a settlement of a proceeding pursuant to 12 U.S.C. § 1818(b)(6) 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.

(4) 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 Smith-Kirk 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.

(5) Smith-Kirk 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 she 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.

(6) Smith-Kirk acknowledges that she 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 her to agree to consent to the issuance of this Order and/or to execute this Order.

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

Signed  
\_\_\_\_\_  
Ronald G. Schneck  
Director for  
Special Supervision

12/12/03  
\_\_\_\_\_  
Date

Signed  
\_\_\_\_\_  
Wendi Smith-Kirk

12/3/03  
\_\_\_\_\_  
Date