

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

IN THE MATTER OF:

URIEL MENDIETA,
FORMER PRESIDENT, CHIEF EXECUTIVE
OFFICER, AND DIRECTOR OF TERRABANK
NATIONAL ASSOCIATION
MIAMI, FLORIDA

AA-EC-06-04

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) has initiated prohibition, cease-and-desist, and civil money penalty proceedings against Uriel Mendieta (“Respondent”) pursuant to 12 U.S.C. §§ 1818(b), (e), and (i) (as amended) through the issuance of a First Amended Notice of Charges and Assessment of Civil Money Penalty, dated April 11, 2006 (“Notice”); 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, Respondent, without admitting or denying any wrongdoing, desires 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) Terrabank, National Association, Miami, Florida (“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.* The Bank has been an “insured depository institution,” as that term is defined in 12 U.S.C. § 1813(c)(2), at all times relevant to this Order.

(2) Respondent was the president, the chief executive officer, and a 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 years preceding service of the Notice. *See* 12 U.S.C. § 1818(i)(3).

(3) Pursuant to 12 U.S.C. §§ 1813(q) and 1818(i)(3), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against an institution-affiliated party of the Bank. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain a prohibition and cease-and-desist proceeding against him pursuant to 12 U.S.C. § 1818(b)(6), (e), and to assess a civil money penalty against him pursuant to 12 U.S.C. § 1818(i).

Article II

ORDER OF PROHIBITION

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, 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 depository institution under 12 U.S.C. §§ 1818(b)(3), (b)(4) or (b)(5), including, but not limited to, any subsidiary of such institution, or treated as a savings and loan holding company or subsidiary 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), or (h) (as amended).

Article III

CEASE AND DESIST ORDER FOR
INDEMNIFICATION AND REIMBURSEMENT

(1) Respondent shall indemnify the Bank for fifty percent (50%) of the amount of principal and interest that a court of competent jurisdiction in a final and non-appealable judgment determines must be honored by the Bank under one or more of the guarantees referenced in the Notice (“Guarantees”). Respondent shall provide the indemnification required by this paragraph in full within thirty (30) days of receiving notice from the Bank that it has honored one or more of the Guarantees pursuant to a final and non-appealable judgment.

(2) Respondent shall reimburse the Bank for fees and costs of outside counsel, accountants, and consultants to the Bank that the Bank has incurred and will incur from the date that Respondent tendered his resignation to the Bank, November 22, 2005, up to and including December 31, 2006 and that are related to the Guarantees (“Professional Service Fees”); provided, however, that Respondent shall have no obligation to reimburse the Bank for Professional Service Fees in excess of one hundred thousand dollars (\$100,000). Respondent shall provide the reimbursement required by this paragraph in full within thirty (30) days of the date the Professional Service Fees are documented by the Bank.

(3) Respondent shall pay the indemnification and reimbursement required by this Article by cashier’s check, certified check, money order, or wire transfer made payable to the Bank and shall deliver a copy of the payment to the Director of the Enforcement & Compliance Division, Office of the Comptroller of the Currency (“Director”), with reference to the docket number of this case.

(4) If Respondent fails to comply with any provision of this Order, then the entire balance of the indemnification and reimbursement amounts described in this Order shall become immediately due and payable.

(5) 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

CEASE AND DESIST ORDER FOR RESTITUTION

(1) Respondent shall pay restitution to the Bank of four hundred six thousand nine hundred seventy six and 27/100 dollars (\$406,976.27), which constitutes fifty percent (50%) of the eight hundred thirteen thousand nine hundred fifty two and 55/100 dollars (\$813,952.55) in Grupo Invernic¹ debt that the Bank has charged off as of the date of this Order (“Grupo Invernic Debt”). Respondent shall pay the restitution required by this Article to the Bank in three installments as follows:

- (a) Respondent shall make payment of one hundred thousand dollars (\$100,000) on or before December 31, 2006;
- (b) Respondent shall make payment of one hundred thousand dollars (\$100,000) on or before December 31, 2007; and
- (c) Respondent shall make payment of the balance, two hundred six thousand nine hundred seventy six and 27/100 dollars (\$206,976.27), on or before December 31, 2008.

¹ “Grupo Invernic” consists of Inversiones Nicaraguenses Internacionales, S.A., Agricultura Marina, S.A., Compania Pesquera Atlantico Norte, S.A., and Inversiones Langosta Viva Nicaraguense.

(2) Respondent shall pay the restitution required by this Article by cashier's check, certified check, money order, or wire transfer made payable to the Bank and shall deliver a copy of the payment to the Director, with reference to the docket number of this case.

(3) In the event that Grupo Invernic pays the Bank for any of the Grupo Invernic Debt, such amounts shall be applied to the unpaid Grupo Invernic Debt as follows:

- (a) first, to the fifty percent (50%) of the Grupo Invernic Debt for which Respondent is not responsible for restitution;
- (b) second, to the installment due from Respondent pursuant to this Article on December 31, 2008, if unpaid;
- (c) third, to the installment due from Respondent pursuant to this Article on December 31, 2007, if unpaid; and
- (d) fourth, to the installment due from Respondent pursuant to this Article on December 31, 2006, if unpaid.

(4) In no event shall Respondent be required to make payment to the Bank pursuant to this Article if such payment would cause the Bank's recovery on the Grupo Invernic Debt to exceed eight hundred thirteen thousand nine hundred fifty two and 55/100 dollars (\$813,952.55).

(5) If Respondent fails to comply with any provision of this Order, then the entire balance of the restitution amount described in this Order shall become immediately due and payable.

(6) 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 V

ORDER FOR CIVIL MONEY PENALTY

(1) Respondent hereby consents to the payment of a civil money penalty in the amount of one hundred thousand dollars (\$100,000), which shall be paid upon execution of this Order.

(2) Respondent shall make payment in full by cashier's check or certified check made payable to the Treasurer of the United States and shall deliver the payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case should be entered on the payment. Respondent shall send a copy of the cashier's check or certified check to the Director.

(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) or (i) (as amended).

Article VI

ADDRESS NOTIFICATION

(1) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of his current address on the form attached to this Order as Appendix A. Until the indemnification, reimbursement, restitution, and civil money penalty amounts are paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall notify the Director of his new address within seven (7) days of such change in address.

Article VII

BANKRUPTCY

(1) If Respondent files for bankruptcy protection, Respondent shall notify the Director within ten (10) days of the filing and shall provide a copy of the filing to the Director.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligations to pay indemnification, reimbursement, restitution, and/or a civil money penalty pursuant to this Order are subject to discharge, Respondent will in no manner contest the assertion of the Comptroller or any agent, officer or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the indemnification, reimbursement, restitution, and/or civil money penalty obligations in the Order arise out of acts which result in claims not dischargeable in bankruptcy.

Article VIII

WAIVERS

- (1) By executing this Order, Respondent waives:
- (a) Any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 and 12 C.F.R. Part 19;
 - (b) Any and all rights to seek judicial review of this Order;
 - (c) Any and all rights in any way to contest the validity of this Order in any way;
 - (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 legal (or other professional) expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359; and 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 except as permitted by 12 C.F.R. § 7.2014 and Part 359.

(3) Any failure by Respondent to comply with this Order shall be subject to enforcement for the longer of (a) the period allowed by the applicable statute of limitations, or (b) five (5) years following the failure to comply.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of the proceeding initiated by the filing of the Notice by the Comptroller against Respondent. The Temporary Order to Cease and Desist issued to the Respondent on February 3, 2006 is hereby withdrawn. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations referenced in the Notice unless such acts, omissions, or violations reoccur.

(5) This Order is not an adjudication on the merits. If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting Respondent, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing, except as specified in

Article VIII, paragraph (4) of this Order. This Order does not limit any right, power, or authority of any other federal agency, or the United States, including, but not limited to, the Department of Justice, to bring actions as these entities deem appropriate.

Article IX

OTHER PROVISIONS

(1) This Order shall take effect upon its issuance, and shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and become final pursuant to 12 U.S.C. § 1818. This Order shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(2) All notices and submissions to the Director required by this Order shall be sent to 250 E Street SW, Washington, DC 20219.

(3) This Order is “issued with the consent of . . . the institution-affiliated party concerned,” pursuant to 12 U.S.C. § 1818(h)(2).

(4) No separate promise or inducement of any kind has been made by the Comptroller, or his officers or employees, to cause or induce Respondent to consent to this Order.

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

/s/

5/23/06

Uriel Mendieta

Date

IT IS SO ORDERED.

Signed

5/25/06

Ronald G. Schneck
Director for Special Supervision
Office of the Comptroller of the Currency

Date