

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

<b>In the Matter of:</b>	)	
	)	
David E. Simmons	)	AA-WE-2014-47
Member of the Board of Directors	)	
The First National Bank of Layton	)	
Layton, Utah	)	
	)	

**STIPULATION AND CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate civil money penalty proceedings against David E. Simmons (“Respondent”), member of the Board of Directors of The First National Bank of Layton, Layton, Utah; 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) The First National Bank of Layton, Layton, Utah (“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 a member of the Board of Directors 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 enforcement proceedings against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(i).

## **Article II**

### **COMPTROLLER’S FINDINGS**

(1) Pursuant to the authority invested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby finds, and Respondent neither admits nor denies, the following:

- (a) While a member of the Board of Directors of the Bank, Respondent:
  - (i) failed to take appropriate actions in response to previous criticisms and violations relating to the Bank’s compliance with the Real Estate Settlement Procedures Act; and
- (b) By reason of the above actions, Respondent actions and/or inactions caused, allowed, brought about, or contributed to, violations of the

Real Estate Settlement Procedures, 12 U.S.C. § 2601 *et seq* and implementing regulation, 24. C.F.R. Part 3500.

**ORDER FOR CIVIL MONEY PENALTY**

(1) Respondent hereby consents to the payment of a civil money penalty in the amount of one thousand dollars (\$1000.00), which shall be paid upon execution of this Order.

(2) Respondent shall make payment in full by 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 shall be entered on the check. Respondent shall provide a photocopy of the check along with the signed original copy of this Order to the District Counsel, Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, Colorado 80202.

(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 III**

**WAIVERS**

- (1) By executing this Order, Respondent waives:
- (a) The right to the issuance of a Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(i);
  - (b) All rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i) 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 the civil money penalty under this Order, or 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) It is hereby agreed that the provisions of this Order constitute a settlement of the civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, violations

or breaches set forth in Article II above, unless such acts, omissions, violations or breaches reoccur, or the Comptroller learns that Respondent has made any false statement or misrepresentation to the Comptroller or any of his agents or employees in connection with the investigation or review of this matter.

(4) Except as set forth in paragraph (3) of this article, it is further agreed that the provisions of this Order 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.

(5) 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.

(6) Respondent expressly acknowledges that no officer or employee of the OCC has statutory or other authority to bind the United States, the United States Department of the Treasury, the OCC, any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities.

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

/s/

May 27, 2014

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Kay E. Kowitt  
Deputy Comptroller  
Western District

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Date

/s/

April 23, 2014

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David E. Simmons

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Date