

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)	Order No. SF-93-041
FRANK J. MOLA, Former Chairman of)	Dated: November 22, 1993
the Board of Directors of Charter)	
Savings Bank, F.S.B., Newport)	
Beach, California)	

STIPULATION AND CONSENT TO ISSUANCE OF ORDER OF
PROHIBITION, ORDER OF RESTITUTION AND
CEASE AND DESIST ORDER

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the West Region, and FRANK J. MOLA ("Mola"), the former Chairman of the Board of Directors and an officer of Charter Savings Bank, fsb, Newport Beach, California ("Charter"), hereby stipulate and agree as follows:

1. Consideration

The OTS, based upon information gathered in the examination and supervisory process, is of the opinion that grounds exist to initiate administrative proceedings against Mola pursuant to 12 U.S.C. §§ 1818, et seq. Mola desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, while neither admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance of the OTS from initiating such administrative proceedings, or any other administrative action based upon facts known to the OTS as of the effective date of this stipulation and agreement and arising from

his role or activities as an institution-affiliated party or as a person participating in the conduct of the affairs of Charter, its holding company, service corporations or subsidiaries.

2. Jurisdiction

(a) Charter was a "savings association" within the meaning of Section 3 of the Federal Deposit Insurance Act ("FDIA") and Section 2 of the Home Owners' Loan Act ("HOLA"), as amended by FIRREA. Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c)(2) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(c)(2).

(b) Mola, as an officer and Chairman of the Board of Directors of Charter, was an "institution-affiliated party" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C. 1813(u)(1).

(c) Pursuant to Section 3(g) of the FDIA, as amended by FIRREA, the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association or its institution-affiliated parties. Therefore, Mola is subject to the authority of the OTS to initiate and maintain administrative proceedings against him pursuant to 12 U.S.C. §§ 1818, et seq.

3. Consent

Mola hereby consents to the issuance by the OTS of the accompanying Order of Prohibition, Restitution and to Cease and Desist ("Order"). He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies

with all requirements of law.

4. Finality

The accompanying Order is issued under Sections 8(b) and (e) of the FDIA, as amended by FIRREA, 12 U.S.C. §§ 1818(b) and (e). Upon issuance by the Regional Director for the West Region of the OTS, the Order shall be final, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(i).

5. Financial Disclosure

Mola has supplied to the OTS Statements of Financial Condition of Frank J. and Laurel I. Mola and Mola Development Corporation dated July 31, 1992 ("the Financial Statements"). The information contained in the Financial Statements indicates that Mola presently has a negative or insubstantial net worth. The OTS' decision to enter into this Stipulation and the Order has been predicated in part upon the representations contained in the Financial Statements, and the information contained in the Financial Statements was expressly relied upon by the OTS. Mola asserts that all financial information supplied by him to the OTS was done in good faith and based upon his best knowledge, information and belief. Mola shall, at the time of the execution of this Stipulation, either (a) provide a sworn affidavit under penalty of perjury stating that the previously submitted financial statements described in this paragraph are still true and correct or, in the alternative, (b) submit financial statements, updated to the date of the execution of the

Stipulation, accompanied by a sworn affidavit under penalty of perjury that the information contained in such updated financial statements is true and correct.

6. Order of Restitution Payable Only Upon Default by Mola

Mola hereby consents to an Order of Restitution pursuant to 12 U.S.C. § 1818(b)(6) in the sum of \$2,804,257, together with pre- and post-judgment interest, payment of which is contingent upon a default by Mola under the accompanying Order, as defined below. This sum represents the total financial loss to Charter in connection with (1) Charter's purchase of a participation in a pool of negatively amortized wraparound loans secured by Deeds of Trust on retail commercial properties offered by Pilgrim Mortgage Corporation, owned by Carl M. Rheuban ("Rheuban"), then-president of First Network Savings Bank, resulting in a loss to Charter of \$1,465,193.75 as of July 31, 1993; and (2) Charter's participation in an offering of unsecured, subordinated, fixed and floating rate notes by Credit America, Ltd., a limited partnership formed by Rheuban, resulting in a loss to Charter of \$1,339,063.52 as of July 31, 1993.

As stated above, the obligation to make the restitutionary payment pursuant to the Order is contingent upon a default by Mola under the Order. Mola shall be in default of the Order should it be determined by the OTS that the Financial Statements referred to above (or any additional or subsequent financial statement provided at the time of the execution of this Stipulation) are inaccurate or materially misrepresent in any

manner Mola's financial condition, including but not limited to failure to identify and/or value any material asset. The OTS shall give Mola reasonable notice in the event it determines that Mola is in default hereunder. In the event of a default, the Order shall become immediately fully enforceable after provision of reasonable notice to Mola of the default. The OTS retains all collection and/or enforcement remedies provided by law.

Mola hereby waives and relinquishes any and all affirmative defenses (save and except satisfaction of obligation) which might be asserted in an action by the OTS (or any successor agency), to enforce the Order of Restitution, including but not limited to statute of limitations, laches and/or all other legal or equitable defenses.

7. Reimbursement for OTS' Investigative Costs

Pursuant to 12 U.S.C. § 1818(b)(6) Mola acknowledges and agrees to reimburse and pay to the OTS its costs and expenses incurred in connection with the Formal Examination of Charter. Mola acknowledges and agrees that such costs and expenses to date are in the amount of Twenty Five Thousand Dollars (\$25,000), and that such costs were reasonable and necessary in connection with the Formal Examination of Charter. Mola further agrees to make such payment in the form of a cashier's check to the OTS within one hundred and eighty (180) days of the date of the Order. If payment for the costs and expenses described in this paragraph are not tendered to the OTS within said time frame, interest shall run on said amount in the sum of ten percent (10%) per

annum until OTS is fully reimbursed. The OTS retains all collection and/or enforcement remedies provided by law in order to secure payment of its costs as described herein.

8. Miscellaneous

By signing this document, Mola agrees that he will not assert the payment of OTS' investigative expenses and costs in connection with the Formal Examination of Charter, or any restitutionary payments in the event of a default by Mola as described herein, as a basis for a claim of double jeopardy, res judicata, claim or issue preclusion or any form of estoppel in any pending or future civil or criminal proceeding brought by any other federal or state governmental agency.

Mola further agrees that this Stipulation and Consent, and the accompanying Order, do not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of Mola that arise pursuant to this action or otherwise, and that may be or have been brought by the Resolution Trust Corporation ("RTC"), or any other federal or state governmental agency, other than the OTS.

Mola hereby acknowledges that the obligation to make restitution pursuant to the Order of Restitution is not dischargeable in bankruptcy, and further agrees that he shall not seek to have the obligation discharged in any bankruptcy proceeding.

9. Cooperation

Mola agrees to cooperate fully with the OTS and other

federal agencies. Cooperation includes: (a) providing complete and truthful answers to any and all questions or inquiries by the OTS or its representatives; (b) if requested, and upon reasonable notice, attendance at all meetings or interviews with the OTS or its representatives; (c) on reasonable notice and without service of a subpoena, testify truthfully at any deposition and at any administrative or judicial proceeding involving Charter or any affiliate of Charter or Mola, or any other OTS-regulated entity or person, as to which Mola may have knowledge; and (d) if requested, producing any and all documents or records relating to matters about which the OTS or its representatives may inquire.

10. Waivers

Mola waives his right to an administrative hearing provided by Section 8 of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818, and further waives his right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(h), or otherwise challenge the validity of the Order.

and truthful answers to any and all questions or inquiries by the OTS or its representatives; (b) if requested, and upon reasonable notice, attendance at all meetings or interviews with the OTS or its representatives; (c) on reasonable notice and without service of a subpoena, testify truthfully at any deposition and at any administrative or judicial proceeding involving Charter or any affiliate of Charter or Mola, or any other OTS-regulated entity or person, as to which Mola may have knowledge; and (d) if requested, producing any and all documents or records relating to matters about which the OTS or its representatives may inquire.

6. The Stipulation is made part hereof and is incorporated herein by this reference.

7. This Order is subject to the provisions of Section 8(j) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(j).

OFFICE OF THRIFT SUPERVISION

By:

/S/

John F. Robinson
Regional Director, West Region

WHEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the Regional Director for the West Region Office, on behalf of the OTS, and Mola execute this Stipulation and Consent to Issuance of Order Prohibition, Order of Restitution and Cease and Desist Order.

Dated: _____ /S/ Frank J. Gola

Dated: November 22, 1993 /S/ John F. Robinson
Regional Director, West Region

of the affairs of any institution(s) or other entity as set forth in Section 8(e)(7)(A) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(e)(7)(A). Pursuant to Section 8(e)(6) of the FDIA, as amended by FIRREA, 12 U.S.C. 1818(e)(6), conduct prohibited by this Order includes, inter alia, the solicitation, transfer, or exercise of any voting rights with respect to any securities issued by any insured depository institution, including but not limited to its holding company, subsidiary or service corporation, except as is expressly set forth in the Stipulation.

3. Mola shall make restitution to Charter or its legal custodian pursuant to 12 U.S.C. § 1818(b)(6) in the sum of \$2,804,257, payment of which is contingent upon a default by Mola under this Order. Mola shall be in default of this Order should it be determined by the OTS that the Financial Statements described in the Stipulation are inaccurate or materially misrepresent in any manner Mola's financial condition, including but not limited to failure to identify and/or value any material asset.

4. Within one hundred and eighty (180) days of the date of this Order, Mola shall make reimbursement to the OTS for its expenses and costs incurred in connection with the Formal Examination of Charter by tendering a cashier's check to the OTS in the amount of twenty five thousand dollars (\$25,000) made payable to the Office of Thrift Supervision;

5. Mola shall cooperate fully with the OTS and other federal agencies. Cooperation includes: (a) providing complete

and truthful answers to any and all questions or inquiries by the OTS or its representatives; (b) if requested, and upon reasonable notice, attendance at all meetings or interviews with the OTS or its representatives; (c) on reasonable notice and without service of a subpoena, testify truthfully at any deposition and at any administrative or judicial proceeding involving Charter or any affiliate of Charter or Mola, or any other OTS-regulated entity or person, as to which Mola may have knowledge; and (d) if requested, producing any and all documents or records relating to matters about which the OTS or its representatives may inquire.

6. The Stipulation is made part hereof and is incorporated herein by this reference.

7. This Order is subject to the provisions of Section 8(j) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(j).

OFFICE OF THRIFT SUPERVISION

By:

/S/

John F. Robinson
Regional Director, West Region