

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	
	)	
RIVER CITY BANK	)	
SACRAMENTO, CALIFORNIA	)	CONSENT ORDER, ORDER
	)	FOR RESTITUTION, AND
	)	ORDER TO PAY
	)	CIVIL MONEY PENALTY
	)	
	)	FDIC-13-208b
(INSURED STATE NONMEMBER BANK)	)	FDIC-13-209k
	)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency under Section 3(q) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1813(q), for River City Bank, Sacramento, California (“Bank” or “RCB”).

The FDIC determined that the Bank engaged in: (1) unsafe or unsound banking practices; (2) deceptive practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1) stemming from the Bank’s failure to properly oversee implementation of the 2009 final rule amending 12 C.F.R. § 1005 (“Regulation E”) requiring customers to affirmatively opt in to a bank’s overdraft program before the bank can assess fees for overdrafts resulting from ATM and one-time debit card transactions (“Overdraft Fees”); and (3) violations of Regulation E by using an opt-in notice (“Opt-In Notice”) that failed to make required disclosures and was substantially different from the model opt-in notice.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER,

ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY

(“CONSENT AGREEMENT”), dated September 17, 2013, that is accepted by the FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation, to the issuance of this CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively “ORDER”) by the FDIC.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), have been satisfied, the FDIC hereby issues the following:

I. CONSENT ORDER

IT IS HEREBY ORDERED that the Bank, its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from engaging in unsafe or unsound banking practices and violations of law and/or regulations, as more fully set forth in the Compliance Report of Examination dated October 15, 2012 (“Compliance ROE”), and from operating in violation of Section 5 and Regulation E.

IT IS FURTHER ORDERED that the Bank, its institution-affiliated parties, and its successors and assigns, shall take the following affirmative action:

CORRECTIONS OF VIOLATIONS OF LAW

1. Within 60 days of the effective date of this ORDER, the Bank shall correct all violations of law, as more fully set forth in the Compliance ROE and as described herein, and implement procedures to prevent their recurrence. The Bank’s actions as required by this paragraph shall be satisfactory to the Regional Director of the FDIC’s San Francisco Regional Office (“Regional Director”) as determined at subsequent examinations and/or visitations.

2. The Bank shall comply with the guidance set forth in *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (FIL-26-2004, issued March 11, 2004).

OVERDRAFT GUIDANCE COMPLIANCE

3. Within 60 days of the effective date of this ORDER, the Bank shall perform a comprehensive review of the Bank's automated overdraft program, including its marketing, to ensure that policies and procedures, forms and disclosures conform to all applicable consumer protection legal and regulatory requirements and guidance, including specific regulatory guidance provided in the Financial Institution Letter ("FIL") *Overdraft Protection Programs Joint Agency Guidance*, FIL-11-2005, and in FIL-81-2010, *Overdraft Payment Programs and Consumer Protection: Final Overdraft Payment Supervisory Guidance*.

COMPLIANCE MANAGEMENT SYSTEM

4. Within 90 days from the effective date of this Order, the Bank shall develop and implement a Compliance Management System ("CMS") that is commensurate with the level of complexity of the Bank's operations. The CMS shall include the development and implementation of a comprehensive written compliance program ("Compliance Program") to ensure compliance with all applicable state and federal consumer protection laws and implementing rules and regulations, regulatory guidance, and statements of policy ("Consumer Protection Laws"). At a minimum, the Compliance Program shall provide for and include:

(a) Development and implementation of a formalized compliance monitoring program commensurate with the size and complexity of the Bank's operations. The monitoring program procedures shall ensure the following:

(i) follow-up actions and corrective attention are provided to exceptions identified during monitoring;

(ii) specific provisions are developed to prevent future violations of the Consumer Protection Laws cited in the Compliance ROE; and

(iii) adherence to all laws and regulations applicable to the Bank.

(b) Development and implementation of compliance tracking and reporting mechanism for any deficiencies identified from the Bank's compliance monitoring activities. As appropriate, the root cause of identified deficiency shall be determined and subsequent corrective actions should be tested for effectiveness of corrective actions.

(c) Development and implementation of a compliance training program for all Bank personnel, including management and the Board. The program should include training in all applicable Consumer Protection Laws.

(d) Development and implementation of procedures for managing third-party risk, including ongoing due diligence reviews for compliance related third-party vendors commensurate with the level of consumer protection compliance risk. The Bank shall ensure ongoing compliance with FIL 44-2008, *Guidance for Managing Third Party Risk*.

(e) Development and implementation of written procedures for proper maintenance and retention of all Bank records and data, including records and data collected or held by third-party vendors or affiliates, such that the records and data accurately corresponds to the Bank's policies and procedures, can be used effectively in the Bank's compliance monitoring activities, are readily available to Bank personnel and management and, upon request, by the FDIC.

COMPLIANCE STAFFING

5. The Bank shall have a qualified Compliance Officer who possesses the requisite knowledge and experience to administer an effective CMS. The Compliance Officer shall be

given authority by the Bank's Board to implement and supervise the Bank's Compliance Program, including but not limited to the elements described within this ORDER, as well as monitoring and reviewing internal audit reports to ascertain compliance with Consumer Protection Laws and the performance of the Bank's CMS.

6. The Bank shall increase the resources dedicated to its CMS and Compliance Program commensurate with the level and complexity of the Bank's operations.

BOARD OF DIRECTORS

7. The Board shall increase oversight of the affairs of the Bank by establishing an acceptable CMS that addresses the consumer protection risks identified within the Bank's deposit operations and lending areas. The Board shall, at minimum, ensure the following:

(a) The Board shall maintain both an audit committee and a compliance committee ("Compliance Committee") comprised of at least three directors who are not officers of the Bank.

(b) The Compliance Committee shall meet at least monthly and, at a minimum, the following areas shall be reviewed and approved: minutes of the Risk Committee, Loan Committee, Compliance Officer reports, compliance program audit reports, compliance program policies, and compliance with this ORDER.

(c) The Compliance Committee shall report its actions to the Board at each regularly scheduled Board meeting, and the Board minutes shall document the review and approval of all items before the Board, including the names of any dissenting directors. Nothing in this ORDER shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

(d) The Board, in conjunction with the Compliance Committee, shall allocate resources that are commensurate with the level of complexity of the Bank's operations to ensure the establishment and implementation of an effective CMS, including procedures ensuring the Bank's compliance with all Consumer Protection Laws. The allocated resources shall be sufficient to ensure the Bank's compliance with this ORDER.

(e) The Board, in conjunction with the Compliance Committee, shall:

(i) Ensure that the duties and responsibilities of the Compliance Officer are clearly defined and provide for accessibility to both the Board and the Compliance Committee;

(ii) Require the Compliance Officer to provide regular written reports to the Compliance Committee, including, but not limited to, the enactment and/or promulgation of new Consumer Protection Laws and changes to existing Consumer Protection Laws, training performed, monitoring and compliance audits performed, corrective action taken, and compliance with this ORDER;

(iii) Ensure that the Compliance Officer has and retains sufficient authority and independence to implement policies related to Consumer Protection Laws and to institute corrective action as needed. This authority shall include the ability to cross departmental lines, have access to all areas of the Bank's operations, and effectuate corrective action upon discovering deficiencies; and

(iv) Ensure that the Compliance Officer and all parties with compliance oversight responsibilities receive ongoing training, sufficient time, and adequate resources to effectively oversee, coordinate, and implement the Bank's CMS.

(f) The Compliance Committee shall develop a comprehensive educational program for the Board that is appropriate for the size and scope of the Bank's operations, and that addresses Consumer Protection Laws, and specifically Section 5 and Regulation E.

INDEPENDENT AUDIT PROGRAM

8. Within 30 days from the effective date of this ORDER, the Bank shall submit a risk-based schedule of independent audits to be conducted to ensure compliance with Consumer Protection Laws. These audits shall assess the Bank's CMS and, at a minimum, shall:

(a) Define a comprehensive scope to include appropriate aspects of each law or regulation based on a risk analysis;

(b) Identify the number of transactions sampled by category or product type;

(c) Identify deficiencies;

(d) Provide descriptions of or suggestions for corrective actions and timeframes for correction; and

(e) Establish follow-up procedures to verify that corrective actions were implemented and effective.

9. Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Bank's Audit Committee within 15 days after completion of the independent audit. In addition, the audit report should be thoroughly reviewed by the Bank's Compliance Committee and the Board and fully documented in the Compliance Committee's and the Board's minutes.

10. At the next meeting of the Board or a designated Board committee, but no later than 45 days from receipt of the independent auditor's written report, the Board, or a designated Board committee, shall take action to address the audit's findings and adopt a plan to (i) correct

any deficiencies noted and (ii) implement any recommendations; or explain in a writing signed by all Board members why a particular recommendation is not being implemented.

11. The Bank's actions as required by this ORDER shall be satisfactory to the Regional Director as determined at subsequent examination and/or visitations.

II. ORDER FOR RESTITUTION

12. Within 10 days of the effective date of this ORDER, the Bank shall establish and maintain a segregated deposit account ("Restitution Account") for purposes of providing restitution to Eligible Consumers ("Eligible Consumers") and deposit into the Restitution Account an amount not less than \$1,200,000 ("Payment Floor"). Eligible Consumers are defined as all of the Bank's customers who incurred one or more Overdraft Fees. For all Eligible Consumers, restitution shall be calculated from June 1, 2010 through and including January 31, 2013, except for those Eligible Consumers who the Bank can verify opted in on or after July 1, 2011, in which case restitution shall be calculated from the date the Eligible Consumer opted in through and including the fifth overdraft fee resulting from an ATM or one-time debit card transaction.

13. The Bank shall make all restitution payments required by this ORDER, regardless of whether the total of such payments exceeds the Payment Floor. Until the Bank's restitution obligations under this ORDER are fully satisfied, the Bank shall deposit additional funds into the Restitution Account, as necessary, to ensure that it contains sufficient funds to satisfy the Bank's restitution obligations under this ORDER. Once the FDIC notifies the Bank in writing that all such restitution obligations have been satisfied, including any obligations under paragraph 19 concerning unclaimed restitution payments, the Bank may close the Restitution Account and

remit remaining funds in accordance with its Restitution Plan, described in paragraphs 14 through 19 below.

RESTITUTION PLAN

14. Within 10 days of the effective date of this ORDER, the Bank shall prepare a comprehensive restitution and other relief plan (“Restitution Plan”) for all Eligible Consumers and shall submit the Restitution Plan to the Regional Director for review, comment, and non-objection prior to implementation. The Bank shall then address any comments or objections of the Regional Director, making such changes as may be required to the Restitution Plan.

15. The Restitution Plan shall, at a minimum, require the following elements:

- (a) Issuance of a compliant Opt-In Notice to all Eligible Consumers.
- (b) Cessation of assessment of all Overdraft Fees on Eligible Consumer accounts 30 days from the date the new Opt-In Notice is mailed if a new opt-in election has not been made by the Eligible Consumer.
- (c) For Eligible Consumers, reimbursement of Overdraft Fees. Nothing in this paragraph shall be construed to require reimbursement of Overdraft Fees previously waived or refunded by the Bank. Any required cash restitution amount shall be provided to each of the Eligible Consumers in the form of a certified or bank check or credit to the account of an existing accountholder. The certified or bank checks issued by the Bank shall not limit the consumers’ rights in any way.
- (d) Review and correction of all Bank communications to Eligible Consumers and potential new consumers which relate to the Bank’s overdraft program and alternatives for providing overdraft protection to ensure compliance with all Consumer Protection Laws.

(e) The proposed text of letters and/or electronic mail that shall be sent to Eligible Consumers regarding restitution payments. The text of letters and/or electronic mail shall include satisfactory language explaining the reason the Bank is sending a restitution payment, including that the Bank is sending the payment as the result of an enforcement action by the FDIC. The letters and/or electronic mail shall also include reference to and the web addresses for any FDIC press releases related to the ORDER, and shall not, in any manner, limit a consumer's rights. The letters and/or electronic mail, incorporating any changes that may be required in response to comments by the Regional Director, shall be sent by United States Postal Service first-class mail and/or electronic mail to all Eligible Consumers entitled to receive restitution payments in accordance with the ORDER.

16. Within 30 days of receipt of non-objection from the Regional Director, the Bank shall implement the Restitution Plan.

17. Within 30 days from the effective date of this ORDER, the Bank shall submit to the Regional Director, for review and non-objection, a proposed announcement to be prominently posted on the Bank's website that describes the ORDER and the restitution to be made by the Bank to Eligible Consumers. The announcement shall set forth procedures whereby individuals can check their eligibility for restitution from the Bank and can provide updated electronic mail and/or United States Postal Service mailing address information, via a toll-free number and via the Bank's website. The Regional Director shall notify the Bank in writing of any comments or non-objection to the proposed announcement. The Bank shall address any comments of the Regional Director, making such changes as may be required to the proposed announcement. Upon receipt of the Regional Director's written non-objection, the announcement, incorporating any changes that may be required in response to comments by the

Regional Director, shall be prominently and promptly posted by the Bank to its website without further changes, but in no event later than 60 days from the effective date of this ORDER.

18. The Bank shall retain all records pertaining to the Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the Eligible Consumers; the names, contact, and account information of the Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

MAILING REFUNDS

19. When the Bank makes cash restitution by certified or bank check made payable to an Eligible Consumer, it shall send the certified or bank check by United States Postal Service first-class mail, address correction service requested, to the Eligible Consumer's last address as maintained by the Bank's records. The Bank shall make reasonable attempts to obtain a current address for any Eligible Consumer whose notification letter and/or restitution check is returned for any reason, using standard address search methodologies, and shall promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the certified or bank check for any eligible consumer is returned to the Bank after such second mailing by the Bank, or if a current mailing address cannot be identified using standard address search methodologies, the Bank shall retain the restitution amount of such eligible consumer for a period of three-hundred sixty (360) days from the date the restitution check was originally mailed, during which period such amount may be claimed by such Eligible Consumer upon appropriate proof of identity. After such time these monies will be disposed of in accordance with the Restitution Plan.

INDEPENDENT CERTIFIED ACCOUNTING FIRM

20. Within 45 days from the issuance of this ORDER, the Bank shall retain, at its expense, an independent certified accounting firm (“Firm”) acceptable to the Regional Director to determine compliance with the Restitution Plan set forth in paragraphs 14 through 19 of this ORDER. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures for engagements and provide the report called for in paragraph 25 of this ORDER.

21. Prior to the engagement of the Firm, and no later than 30 days from the issuance of this ORDER, the Bank shall submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the Regional Director for non-objection.

22. The engagement letter between the Bank and the Firm shall grant the FDIC access to the Firm’s staff, work papers, and materials prepared in the course of the Firm’s engagement and preparation of the reports required by this ORDER.

23. To be acceptable to the Regional Director, the Firm must be independent and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy and meet the auditor independence requirements of the Securities and Exchange Commission. Within 15 days after submission of the Firm’s name, the Regional Director shall notify the Bank in writing of the FDIC’s objection or non-objection thereto.

24. The Firm shall review and verify that the Bank accurately identified the Eligible Consumers, as defined in paragraph 12 of this ORDER, and correctly credited the accounts of, and made cash refunds to, as appropriate, Eligible Consumers.

25. The Firm shall prepare a detailed written report of the processes and procedures by which the Bank determined the restitution amounts described in paragraph 15 of this ORDER. The report shall also include at least the following: (i) total number of Eligible Consumers and (ii) total amount of restitution made under the Restitution Plan.

26. The report described in paragraph 25 of this ORDER shall be submitted to the Regional Director for review, comment, and non-objection within 60 days after the Bank has completed implementation of the Restitution Plan.

III. ORDER TO PAY CIVIL MONEY PENALTY

27. **IT IS FURTHER ORDERED** that by reason of the violations of law and regulations set forth herein, and after taking into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the Bank, the gravity of the violations, the history of previous violations by the Bank, and such other matters as justice may require, pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), the Bank shall pay a civil money penalty of \$175,000. The Bank shall pay the civil money penalty to the Treasury of the United States, as directed by the FDIC. The Bank shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification from such payment from any third party.

IV. NOTIFICATION AND REPORTING REQUIREMENTS

PROGRESS REPORTS AND CERTIFICATIONS OF COMPLIANCE

28. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall provide a written progress report addressing each provision of the ORDER and detailing the form, manner, results and dates of any actions taken to secure compliance with the provisions of the ORDER to the Regional Director. All progress reports and other written responses to the ORDER shall be reviewed by the Board and made a part of the

Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the Chairman of the Board and the Bank President. The certification of compliance shall include the following:

(a) A statement confirming that the Bank is in compliance with all provisions of the ORDER; or

(b) If the Bank is not in compliance with all provisions of the ORDER, the Bank must provide:

(i) A list of the provisions with which the Bank is not yet in compliance, an explanation of why the Bank is not yet in compliance with each specific provision, and a description of the actions the Bank has taken to comply with the provision; and

(ii) A statement as to when the Bank will be in full compliance with the ORDER.

SHAREHOLDER NOTIFICATION

29. The Bank shall either provide a copy of the ORDER to its shareholder(s), or furnish a description of the ORDER (“Description”) in conjunction with the next meeting of its shareholder(s), in which case such Description shall fully describe the ORDER in all material respects. The Description and any accompanying communication, statement, or notice shall be sent to the FDIC, Disclosure and Securities Section, 550 17th Street, N.W., Washington, D.C. 20429, for non-objection or comment prior to dissemination to the Bank’s shareholder(s). Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement. This Description shall be disseminated in conjunction with the Bank’s next shareholder communication and in conjunction with its notice or proxy statement preceding the Bank’s next shareholder meeting. The terms “next shareholder

communication” and “next shareholder meeting” mean the next shareholder communication and next shareholder meeting immediately after the FDIC provides the Bank with either non-objection of or comments about the Description.

V. SAVINGS CLAUSE AND EFFECTIVE DATE OF THE ORDER

30. The provisions of the ORDER shall not bar, estop, or otherwise prevent the FDIC or any other federal or state agency or department from taking any other action against the Bank or any of the Bank’s current or former institution-affiliated parties, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u).

31. The ORDER shall be effective on the date of issuance.

32. Calculation of time limitations for compliance with the terms of the ORDER shall be based on calendar days, unless otherwise noted.

33. The provisions of the ORDER shall be binding on the Bank, its officers, agents, servants, employees, institution-affiliated parties, and any successors and assigns thereof.

34. The provisions of the ORDER shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside in writing by the FDIC.

Issued pursuant to delegated authority this 24th day of September, 2013.

/s/
Sylvia H. Plunkett
Senior Deputy Director
Division of Depositor and Consumer Protection