IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	**Civil Action No.**
CHARLES S. BAILEY, WILLIAM H. CAUGHRAN, JOHN E. FIGLEWSKI, GEORGE J. HALL, DEWAYNE S. MADDOX, WILLIAM C. MCKINNON, ROBERT R. PARRISH, JR., KENNETH D. POMEROY, SR., CHARLES W. ROBERTS, III, CHARLES M. SCOTT, JR. and JAMES A. WHITE,	:	
Defendants.	:	

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") files this Complaint and alleges as follows:

1. This case concerns a massive series of accounting frauds involving certain senior officers and directors, and other employees of Superior Bank (the "Bank") and its public holding company, Superior Bancorp ("Superior").

2. Between 2006 and 2011 (the "relevant period"), Defendants Charles S. Bailey ("Bailey"), William H. Caughran ("Caughran"), John E. Figlewski ("Figlewski"), George J. Hall ("Hall"), Dewayne S. Maddox ("Maddox"), William C. McKinnon ("McKinnon"), Robert R. Parrish, Jr. ("Parrish"), Kenneth D. Pomeroy, Sr. ("Pomeroy"), Charles W. Roberts, III ("Roberts"), Charles M. Scott, Jr. ("Scott"), and James A. White ("White") (collectively, "Defendants"), knowingly engaged in widespread and egregious accounting-based frauds at the Bank and Superior, along with related violations of the reporting, internal controls, books-and-records, and proxy solicitation provisions.

3. Upon learning that the collateral for numerous loans was no longer sufficient to protect the Bank and/or that borrowers for many of the largest loans in the Bank's portfolio had no intention of making further payments, each of the Defendants knowingly engaged in schemes to wrongfully extend, renew, and roll-over loans, and/or to substitute straw borrowers in order to avoid properly classifying the loans as impaired and increasing the Allowance for Loan and Lease Losses ("ALLL"). Some of the Defendants, identified below, committed additional accounting frauds with respect to the Bank's loans held for sale ("LHFS") portfolio and its

treatment of a deferred tax asset ("DTA"). Finally, in an effort to raise capital as the Bank was on the brink of failure, several of the Defendants, identified below, conducted an offering fraud by deceiving an individual investor in a $10 million private preferred stock sale.

4. Defendants' fraudulent activity concealed the true state of the Bank's loan portfolio, financial condition, and the results of its operations from its primary regulator, the Office of Thrift Supervision ("OTS"), as well as from the investing public, and contributed to the Bank's ultimate failure in 2011.

5. By fraudulently delaying the recognition of the substantial losses that Superior and the Bank were incurring throughout 2008, 2009 and 2010, the Defendants were attempting to "kick the can down the road," in a manner of speaking, i.e., trying to buy time for Superior and the Bank to raise capital, to be sold, and/or to avoid the closing of the Bank prior to April 15, 2011.

6. These frauds were accomplished by various actions that resulted in the filing of false and misleading annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, registration statements on Form S-8, and proxy statements. These filings contained multiple false and misleading statements, including financial statements, Management's Discussion and Analysis ("MD&A"), press releases, statements rendered misleading by material omissions

and/or failure to make required disclosures regarding Superior's financial condition, results of operations, and/or related party transactions.

7. In fiscal year 2009, Superior's Income (Loss) before Income Taxes was misstated by approximately $80.2 million—or 71%—for the year, and was materially misstated each quarter, including a misstatement of approximately 107% for the third quarter. For the third quarter, Superior reported income when it should have reported a loss.

8. In fiscal year 2009, Superior's Net Income (Loss) Applicable to Common Stockholders was misstated by approximately $80.2 million—or 99%—for the year, and was materially misstated each quarter, including a misstatement of approximately 313% for the fourth quarter.

9. In fiscal year 2010, Superior's Income (Loss) before Income Taxes was misstated by approximately $197.9 million—or 54%—for the first three quarters combined (year-to-date), and was materially misstated for each of the first three quarters, including a misstatement of approximately 79% for the first quarter.

10. In fiscal year 2010, Superior's Net Income (Loss) Applicable to Common Stockholders was misstated by approximately $232.9 million—or 54%—for the first three quarters combined (year-to-date), and was

materially misstated for each of the first three quarters, including a misstatement of approximately 86% for the first quarter.

I. JURISDICTION AND VENUE

11. The Commission brings this action pursuant to Sections 20(b), 20(d), and 20(e) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77t(e)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin the Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties, and for other equitable relief.

12. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

13. Defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

14. Venue lies in this Court because certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred within this District.

II. DEFENDANTS, RELATED PERSONS AND ENTITIES

A. Defendants

15. **Charles S. ("Stan") Bailey**, age 66, is a resident of Baileyton, Alabama. He was the Chief Executive Officer ("CEO") and the Chairman of Superior's Board of Directors from January 2005 until March 2011. He was also the CEO and the Chairman of the Bank from January 2005 through December 2009 and President of the Bank from October 2009 until March 2011.

16. **William H. "Bill" Caughran**, age 59, is a resident of Pelham, Alabama. He was the General Counsel of Superior and the Bank from approximately 2006 through April 2011, and he was Secretary of Superior from no later than April 2007 through April 2011. Caughran is an attorney licensed in Alabama.

17. **John E. Figlewski**, age 59, is a resident of Valrico, Florida. From February 2008 until April 2011, he was the Chief Credit Officer of the Bank's Florida market and the Chairman of the Florida Loan Committee.

18. **George J. Hall**, age 58, is a resident of Palm Harbor, Florida. From December 2006 until April 2011, he was the President of the Bank's Florida operations and a member of the Florida Loan Committee.

19. **Dewayne S. "Shannon" Maddox**, age 48, is a resident of Marianna, Florida. From at least 2006 until approximately April 2011, he was the Market Executive for the Bank's Northwest Florida Region and a member of the Florida Loan Committee.

20. **William C. "Bill" McKinnon**, age 57, is a resident of Mountain Brook, Alabama. From at least October 2005 through March 2012, he was the Senior Vice President and Commercial Real Estate Loan Officer of the Bank.

21. **Robert R. Parrish, Jr.**, age 61, is a resident of Tallahassee, Florida. From approximately November 2005 until April 2011, he was a member of Superior's Board of Directors. He was also a member of the Nominating and Corporate Governance Committee and Chairman of Superior's the Board Loan and Investment Committee in 2009 and 2010.

22. **Kenneth D. "Ken" Pomeroy, Sr.**, age 64, is a resident of Gulfport, Florida. From January 2008 until January 2009, he was the President of the Bank's Central Florida region and, from January 2009 until April 2011, he was the

Corporate Banking Executive for the Bank's Florida market. From January 2007 until April 2011, he was a member of the Florida Loan Committee.

23. **Charles W. "Chuck" Roberts, III**, age 62, is a resident of Tallahassee, Florida. He was a member of Superior's Board from approximately January 2008 until April 2011 and he was a member of Superior's Compensation Committee.

24. **Charles M. "Marvin" Scott, Jr.**, age 66, is a resident of Van Buren, Arkansas. Throughout the relevant time period, he was a member of the Boards of both Superior and the Bank. He served as President of the Bank from January 2005 until October 2009, and, in October 2009, he became the CEO of the Bank. From March 2011 until April 2011, he was the CEO and the Chairman of Superior. Scott was also a member of the Executive Loan Committee, the Florida Loan Committee, and the Alabama Loan Committee.

25. **James A. "Jim" White**, age 72, is resident of Midlothian, Virginia. In September 2008, he joined Superior as Chief Administrative Officer and Executive Vice President, and, from October 2008 until April 2011, he served as the Chief Financial Officer ("CFO") of Superior.

B. <u>Relevant Corporate and Banking Entities</u>

26. **Superior Bancorp** (formerly "The Banc Corporation") is a Delaware corporation headquartered in Birmingham, Alabama. Prior to the Commission's

revocation of the registration of its securities on July 6, 2012, the common stock of Superior was registered under Section 12 of the Exchange Act and quoted under the symbol "SUPR" on the NASDAQ Stock Market ("NASDAQ").

27. **Superior Bank** (formerly "The Bank") was the primary subsidiary of Superior Bancorp. It was a federal savings bank with principal offices in Birmingham, Alabama and Tampa, Florida. The Bank was regulated by the OTS, which closed the Bank on April 15, 2011 and appointed the Federal Deposit Insurance Corporation ("FDIC") as receiver. Superior's failure was the largest bank failure in the United States in 2011. The surviving assets and liabilities of the Bank were then purchased by Cadence Bancorp, LLC ("Cadence") in a brokered transaction with the FDIC. Prior to its failure, the Bank had more than $3 billion in assets and was the second largest Alabama-based bank.

28. **The Board Loan and Investment Committee** ("BLIC") provided approval and review of larger lending relationships throughout the Bank where the total credit exposure ("TCE") by either individual loan or lending relationship exceeded $10 million. In making credit decisions, the BLIC was presented with loan files or detailed summaries relating to the loans presented for approval. In 2009 and 2010, the BLIC was chaired by Defendant Parrish. Defendants Bailey and Scott were voting members of the BLIC for the first two quarters of 2009. For

the second half of 2009 and the first three quarters of 2010, Defendants Bailey, Caughran, Figlewski, Hall, Scott, and White were non-voting participants of the BLIC and attended its meetings. The BLIC met quarterly and maintained regular board minutes.

29. **The Florida Loan Committee** ("FLC") had primary management responsibility for credit approval of Florida-based loans where the TCE exceeded $2 million and for the renewal of substandard loans where the TCE exceeded $500,000. In making credit decisions, the FLC was presented with loan files or detailed summaries relating to the loans presented for approval. In 2009 and 2010, members of the FLC included Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott. The FLC met weekly and maintained regular board minutes.

30. **The Superior Certification Committee** ("Certification Committee") was organized after the enactment of The Sarbanes-Oxley Act of 2002 ("The Sarbanes-Oxley Act") by Superior in connection with its annual and quarterly certification obligations. The Certification Committee purported to review draft copies of Superior's quarterly and annual filings with the Commission. The Certification Committee included Defendants Caughran, Scott, White, Superior's Chief Accounting Officer, and others.

C. <u>Certain Related Persons</u>

31. **Kedrick E. "Earl" Durden** ("Durden"), deceased, was a member of Superior's Board from December 1998 until April 2008. Durden was later re-appointed, without shareholder approval, to Superior's Board on October 6, 2009 and served until his death in April 2010. Durden was the managing member of Durden Enterprises, LLC ("Durden Enterprises"). Durden owned approximately 2% of the outstanding common stock of Superior and, as of April 2010, he held options and warrants in Superior which, if exercised, would have made him the owner of 9.9% of Superior's stock.

32. **Borrower A**, a resident of Tallahassee, Florida, is the term used herein to refer to the owner of several limited liability corporations that constructed and developed commercial and residential real estate properties, primarily related to student housing. Borrower A, individually and through his various companies, had a long-standing banking relationship with the Bank and was a key commercial customer. At the time of the Bank's failure, Borrower A and his affiliated corporate entities represented the Bank's single largest delinquent borrower relationship.

33. **Borrower B** is a resident of Dothan, Alabama. He was a co-founder and the president of Movie Gallery, Inc. ("Movie Gallery"), a video rental

company whose stock was quoted on the NASDAQ until it was delisted in November 2007. At its height, Borrower B owned 1.2 million shares (3.1%) of Movie Gallery. Borrower B left Movie Gallery in 2007 after the company filed for Chapter 11 bankruptcy. Borrower B then began developing real estate, for which he relied heavily on the Bank for financing.

34. **Borrowers C, D, E and F,** discussed herein, are references to other pertinent individuals that had loans from the Bank.

35. **Guarantors A, B and C**, discussed herein, are references to individuals who were guarantors for loans that the Bank had extended.

36. **Investors A, B and C**, discussed herein, are references to entities which at one time considered purchasing non-performing loans from the Bank that the Bank was actively marketing for sale.

37. **Investor D**, discussed herein, was a Florida doctor, who, on or about May 6, 2010, entered into a series of stock purchase agreements with Superior, on behalf of several entities that Investor D owned, for the purchase of $10 million of cumulative convertible preferred stock.

III. FACTS

A. Market and Regulatory Background

38. When the real estate market weakened in 2007, the Bank began to experience an increase in non-performing assets, a trend that worsened in 2008 as the economy further deteriorated.

39. The United States Department of the Treasury's Troubled Asset Relief Program ("TARP") was established on October 3, 2008. As part of TARP, the Capital Purchase Program ("CPP") was launched to stabilize the financial system by providing capital to what appeared to be viable financial institutions of all sizes throughout the nation. The CPP was designed to bolster the capital position of viable institutions of all sizes and to build confidence in these institutions and the financial system as a whole.

40. On or about December 5, 2008, Superior received $69 million in federal taxpayer funds from TARP through the sale of Fixed Rate Cumulative Perpetual Preferred Stock and a ten-year warrant to purchase voting common stock of Superior. On or about December 11, 2008, Superior transferred $65,550,000 of the $69 million to the Bank.

41. The Bank was the 26th largest bank, based on assets, to fail as a result of the financial crisis from 2008 through 2012.

42. Superior failed to repay the $69 million in TARP funds they received from the CPP. As of September 30, 2015, this failure was the seventh largest write-off of a U.S. Treasury Department TARP investment in a bank. Superior also failed to pay $2,587,500 of cumulative dividends it owed to the United States Department of Treasury.

43. On June 22, 2009, the OTS began conducting a safety and soundness examination of Superior and the Bank. As a result of the examination, the OTS issued two Reports of Examination on or about December 18, 2009 (collectively, the "OTS ROE") informing Superior and the Bank that they had significant deficiencies in their operations. Defendants Bailey, Scott, Parrish, and Roberts each signed the OTS ROE as directors of both Superior and the Bank. The OTS ROE cited problems including the quality of the Bank's loan portfolio and the Bank's use of outdated appraisals to value loan collateral. The OTS ROE required the Bank to obtain an independent review of its commercial loan portfolio and the related ALLL. During 2010, several outside loan review companies engaged by Superior examined the Bank's loans and the related ALLL. In addition, in 2010, certain potential investors in Superior also hired outside loan review companies to examine the quality of the Bank's loan portfolio, the results of which were made available to the Bank. Each of these outside loan reviewers separately concluded

that Superior had failed to recognize material credit losses in its loan portfolio on a timely basis. Each of the loan reviewers that considered Superior's ALLL concluded that it was materially understated. The reviewers determined that Superior failed to recognize material losses—with one reviewer determining the amount of such unrecognized losses to be as high as $456 million. Further, the reviewers concluded—and communicated to Superior in most cases—that Superior's failure to recognize these losses was a chronic problem that had been building up over many reporting periods.

44. On January 29, 2010, following the issuance of the OTS ROE, the OTS required the Bank and Superior to enter into certain confidential memoranda of understanding ("OTS MOUs"). The OTS MOUs were reviewed by Defendants Bailey, Caughran, White, Hall, Parrish, and Roberts, and were formally approved and entered into by Defendants Bailey, Scott, Parrish, and Roberts.

45. In addition to requiring the Bank to decrease troubled assets and increase regulatory capital, the OTS MOUs expressly prohibited the Bank from paying dividends to Superior, and also prohibited Superior from paying dividends to shareholders, absent specific prior written approval from the OTS.

46. Superior failed to make timely public disclosure of these dividend restrictions. On March 11, 2010, in its Form 10-K for the year ended 2009,

Superior first identified any dividend restrictions by the OTS – but it falsely and misleadingly stated that the Bank merely had an obligation to "notify the OTS before declaring any dividend." The Form 10-K for the year ended 2009 was signed by Defendants Bailey, Parrish, Roberts, Scott and White. Defendant Caughran reviewed the 2009 Form 10-K. The Form 10-K for the year ended 2009 failed to disclose that it was overwhelmingly unlikely that the OTS would approve the payment of dividends by either Superior or the Bank, even though Defendants Bailey, Parrish, Roberts, Scott, White, and Caughran knew this to be the case.

47. On or about August 16, 2010, Superior, in its Form 10-Q for the period ended June 30, 2010, falsely and misleadingly stated that in June 2010, the OTS imposed a prohibition on the Bank's payment of dividends to Superior absent prior approval from OTS. In fact, the restrictions on the Bank's and Superior's ability to pay dividends were a result of the MOUs that they entered into with the OTS in January of 2010.

48. During 2009 and 2010, Superior made various efforts to increase regulatory capital and sell and restructure troubled assets. Despite these efforts, the level of non-performing assets, net charge-offs, past due loans, and classified assets continued to increase.

49. On June 15, 2010, the OTS issued a "Composite and Component Ratings Changes and Notice of Determination of Troubled Condition" to both Superior and to the Bank ("OTS Notice").

50. Superior's OTS Notice recognized that Superior was "in an unsafe and unsound condition" because, among other reasons, it was unprofitable, it was insufficiently capitalized with no additional capital support available, its capital was fully deployed, it lacked sufficient liquidity to meets its obligations including its debt service, and the Bank was unable to provide dividends to Superior to provide cash flow to fund Superior's operations and debt service.

51. The Bank's OTS Notice found that the Bank was "in an unsafe and unsound condition" because of deteriorating asset quality, deficient earnings, eroded capital levels, and its high level of commercial real estate and construction loans, among other reasons.

52. Prior to his departure from the Bank in in September 2008, the former Chief Credit Officer of the Bank's Alabama operations ("CCO") told Defendant White that the Bank's management was engaged in unsafe and unsound practices. Defendant White conveyed the former CCO's observations to Defendant Bailey. Neither Defendant White nor Defendant Bailey, however, took any action to

address the former CCO's admonition, but, instead, engaged in the fraudulent conduct described herein.

53. On or about October 12, 2010, the OTS conducted another examination of the Bank.

54. On November 2, 2010, Superior and the Bank each entered into a Stipulation and Consent with the OTS regarding the OTS's issuance of a Cease and Desist Order that, among other things, found that the Bank had engaged in "unsafe or unsound banking practices" and had a "materially underfunded ALLL."

55. On April 15, 2011, the OTS took over the bank and appointed the FDIC as receiver, with the remaining assets and liabilities purchased in a brokered sale by Cadence.

56. The FDIC's Deposit Insurance Fund is designed to insure deposits and to protect depositors of insured banks, and to resolve failed banks. The FDIC's Debt Guarantee Program was implemented by the FDIC to guarantee certain newly issued senior unsecured debt. As of December 31, 2014, the FDIC incurred a loss of approximately $320,129,000 from the failure of the Bank.

B. Overview of Fraudulent Loan Schemes and Financial Impact

57. Each of the Defendants was involved in long-running schemes, some beginning at least as early as 2006, to conceal non-performing loans and the

financial condition and results of operations of both Superior and the Bank. Each of the Defendants had a role in intentionally disguising troubled loans in an effort to avoid taking appropriate write-downs and impairments that would cause Superior's financial statements to accurately reflect the true condition of the Bank. These schemes violated multiple provisions of applicable banking regulatory rules and regulations, Generally Accepted Accounting Principles ("GAAP"), and the Bank's internal written banking policies and procedures.

58. Each of the Defendants engaged in knowing and intentional fraudulent conduct with respect to the loans in question by not properly accounting for them despite having a responsibility to do so, by causing the ALLL for Superior to be materially understated, and by causing Superior's corresponding income to be materially overstated.

59. A list of 52 loans that were part of the Defendants' fraudulent schemes, and the corresponding impact to Superior's ALLL from the first quarter of 2009 through the third quarter of 2010, is set forth at Appendix A, which is incorporated by reference herein.

60. A further list identifying, by loan, the Defendants who knowingly and intentionally participated in not properly accounting for the 52 loans, in causing the ALLL for the loans to be materially understated, and in causing Superior's

corresponding income from the first quarter of 2009 through the third quarter of 2010 to be materially overstated, is included at Appendix B, which is incorporated by reference herein.

61. Tables showing the approximate amounts of misstatements in the (1) Income (Loss) Before Income Taxes and (2) Net Income (Loss) Applicable to Common Stockholders reported in Superior's financial statements for each quarter of 2009 and the first three quarters of 2010 are provided in Appendix C, which is incorporated by reference herein.

62. The Defendants' schemes generally fall into the four categories described below, with specific examples of the misconduct set forth thereafter. These schemes failed to conform with GAAP and with banking regulations and policies to which the Bank was subject.

1. Non-Recourse Loans / "Put" Loans / Substitute Borrowers

63. Certain of the Defendants, as identified below, replaced the borrowers of record for loans that were severely delinquent with "new" borrowers, who typically had multiple existing loans with the Bank. The "new" borrowers did not personally guarantee the loans they had assumed, nor did they provide collateral sufficient to protect the loans.

64. Certain of the “new” borrowers were in default on other loans from the Bank and agreed to take on the additional loans as an explicit accommodation to avoid foreclosure or collection efforts on their existing loans.

65. Certain of the “new” borrowers needed a legitimate loan from the Bank, and were told that approval was possible only if they nominally assumed another borrower’s loan; in these situations, the “new” borrowers were told that at the end of a set period of time, the loan could simply be “put” back to the Bank with no recourse or personal liability.

66. Certain of the “new” borrowers were directors of Superior; in such cases, the Bank would commonly issue a letter of credit or make a separate loan to enable the “new” borrowers to make loan payments for several years.

67. For the non-recourse loans, the “put” loans, and the loans to “new” borrowers, certain of the Defendants, identified below, made clear to the “new” borrowers that they were not personally liable for the loans and that the Bank would not seek to collect from them.

68. Defendants’ conduct involving non-recourse loans, “put” loans, and substitute borrowers violated both Regulation O of the Board of Governors of the Federal Reserve System (12 C.F.R. § 215) (“Regulation O”) and the Bank’s own

internal policies and procedures with respect to guarantees, collateral sufficiency, and the extension of credit to insiders on non-commercially available terms.

2. Outdated / Corrupt Appraisals

69. Certain of the Defendants, as identified below, frequently utilized appraisals that were significantly out of date, sometimes by as much as six years, in order to avoid the consequences of up-to-date independent appraisals showing that the value of the real estate collateral backing the loans in question had declined.

70. These stale appraisals not only failed to reflect the decline in the value of the underlying property, but often grossly misstated the property's value and identified incorrect or unviable projected future uses of the property.

71. Some of the relevant loan files contained information establishing that if current up-to-date independent appraisals were obtained, they could not support the underlying loan relationships.

72. Some of the loan files and related correspondence show that appraisers were selected for improper reasons or had direct conflicts of interest, such as being beholden to the Bank or to the relevant borrower.

73. Defendants' conduct with respect to appraisals violated both official OTS guidance and the Bank's internal policies and procedures regarding the timeliness and validity of appraisals and appraiser independence.

3. Extend-and-Pretend / Extend-and-Amend / Hope / Reset-and-Forget

74. Certain of the Defendants, as identified below, approved renewals, modifications, or extensions of loans that were severely delinquent in both principal and interest payments either by rolling forward the relevant payment dates or by funding new loans which borrowers used to pay-down prior loans.

75. Such practices made the delinquent loans appear to be current, both "on paper" and within the Bank's internal systems. In fact, the borrowers for whom these practices were employed had no change in their ability to pay their loans and, typically, they had expressed their intention not to make further loan payments to Bank personnel. Stale appraisals were typically used in connection with these modifications and renewals, as up-to-date independent appraisals typically would not support them.

76. Defendants' conduct regarding renewals, modifications, and extensions of severely delinquent loans violated both official OTS guidance and the Bank's internal policies and procedures with respect to loan workouts, collateral valuation, debt service coverage analysis, and loan renewal standards.

4. <u>Non-Recourse Joint Ventures</u>

77. Certain of the Defendants, as identified below, proposed, structured and documented joint venture agreements between borrowers who were severely delinquent in both principal and interest payments and Superior Director Kendrick Earl Durden.

78. Under the joint ventures, Durden contributed limited capital, which the Bank applied to bring loans current. Although "on paper" the loans would then appear to be current, Durden had no continuing obligation to the joint ventures, to the borrower, or to the Bank to make any future payments on the loans, nor did Durden assume any personal liability for the loans.

79. In exchange for his initial capital contributions, the Bank subordinated its interests in the collateral to Durden, thereby significantly reducing the Bank's protection in the event of a future default.

80. As the borrowers, who were in default at the time of their entry into the joint ventures, had no enhanced ability to make any future payments under the loans through the joint ventures and Durden had no additional obligation under the loans and now had the primary security interest in the underlying collateral, the only benefit to the Bank was the appearance that the loans were current despite the

overwhelming likelihood that the loans would promptly fall back into delinquency and default.

81. Defendants' conduct regarding the non-recourse joint ventures violated Regulation O, OTS guidance, and the Bank's internal policies and procedures with respect to transactions involving insiders, loan workouts, misleading debt service coverage payments, and unsupported extensions or renewals.

C. Examples of Fraudulent Lending Relationships

1. The Gateway Loan and the Gateway Tallahassee Loans (Defendants Figlewski, Hall, Maddox, Scott, and White)

82. Borrower A, a real estate developer and operator of college student housing, individually and through various companies he controlled, had a long-standing relationship with the Bank.

83. Borrower A and his companies represented one of the Bank's largest lending relationships with a TCE of approximately $18 million by 2007 and a TCE of approximately $25 million by 2011.

84. In June 2007, Borrower A informed the Bank's Chief Credit Officer that he was experiencing financial difficulties, including significant cash flow problems.

85. Borrower A's cash flow problems were recorded in numerous internal bank documents in Borrower A's credit files which specifically acknowledged that

Borrower A and his companies no longer had the ability to maintain debt service coverage on their loans with the Bank.

86. Among the documents in Borrower A's credit files were a June 30, 2007 Risk Rating Change Request stating, "Borrower experiencing cash-flow difficulties exacerbated by over $260MM in contingent liabilities," and memoranda dated December 6, 2007 and January 9, 2008, respectively, stating that the "[Borrower A] Companies … notified Superior that current recurring cash flow is inadequate to support monthly payment obligations."

87. On December 6, 2007, the Bank granted a three-and-one-half month, interest-only $3,965,500 loan to Borrower A (the "Gateway Loan"). The loan was collateralized by two properties in Tallahassee, Florida on which the project was being built, consisting of (a) an abandoned building and (b) an abandoned gas station, both of which were subject to identified environmental concerns.

88. On December 26, 2007, the Bank directed a $2,463,539 draw on the Gateway Loan to two other non-performing Borrower A loans; the Bank transferred an additional $600,000 draw on the Gateway Loan to a third non-performing Borrower A loan (the "Lighthouse Walk" loan), bringing the total initial draw to $3,063,539.

89. Borrower A was unable to repay the Gateway Loan at maturity, which resulted in multiple renewals during 2008 and 2009 with no economic justification for any of the renewals.

90. On August 13, 2008, Borrower A's CFO sent emails to the representatives of several financial institutions, including Defendants Maddox and Hall at the Bank, stating that Borrower A was delinquent in its loan payments, that it had four student housing projects in Chapter 11 bankruptcy, and that it was "not able to accumulate any cash."

91. In December 2008, the final draw on the Gateway Loan of $870,462 was used to reduce the principal balance of another non-performing Borrower A loan to make it appear to be performing (bringing the outstanding loan balance to the full $3,965,500).

92. In January 2009, Borrower A sold the underlying gas station and the building securing the Gateway Loan to Gateway Tallahassee, LLC, which was an unaffiliated third party despite its name. Without obtaining any appraisals, the Bank immediately provided two loans totaling approximately $3.5 million, of which approximately $2.2 million was non-recourse, to Gateway Tallahassee, LLC ("Gateway Tallahasse Loans"). The proceeds of these loans were applied as follows: (a) Just over $1 million was used to pay off a Borrower A loan at another

financial institution which held the first mortgage on the gas station; (b) $1,892,561 was used to pay down the Borrower A Gateway Loan at the Bank (while the $2,072,939 balance on the loan—which Borrower A had no means to repay—was left uncollateralized); (c) $85,000 funded an interest reserve for the Gateway Tallahassee Loans; (d) $51,273 was paid to a county court; and (e) the remaining amount went directly to the new borrower to build a drugstore. Gateway Tallahassee, LLC subsequently defaulted on the loans. On or about May 31, 2012, the underlying property was sold for $1.5 million.

93. At the July 13, 2009 FLC meeting, Defendants Figlewski, Maddox, Scott, and Hall—who had full access to the salient facts—approved the renewal of the Gateway Loan for another six months "to allow additional time to evaluate the sponsor's entire portfolio and determine best exit/repayment strategy."

94. Borrower A's financial condition became so desperate that on August 31, 2009, Borrower A's CFO sent an email to Defendants Maddox, Figlewski and Hall stating, "We need a company credit card and of course all of our cards get cancelled when the issuer does their periodic review. Can you help us? It is almost impossible to operate in today's environment without some cards." In the email, Borrower A's CFO asked: "Can we get a $25,000 account?"

95. On September 24, 2009, Borrower A's CFO emailed Defendants Hall, Figlewski, and Maddox stating: "We are in a real jam. All of our utility bonds are being 'non-renewed.' The first expiration is Monday and we don't have the $60,000 cash that the City of Tallahassee wants." The email continued: "At the moment we haven't got a chance unless you rescue us one more time…"

96. On October 6, 2009, Borrower A's CFO again emailed Defendants Hall and Maddox, stating: "We need a $25,00o [sic] credit card for daily expenses."

97. Borrower A's companies were having difficulties paying day-to-day expenses. For example, during 2008 and 2009, credit card companies cancelled Borrower A's companies' credit cards when they came up for renewal because Borrower A's companies were not able to service their debts.

98. On October 12, 2009, an entry of judgment for $1.3 million and Writ of Garnishment were entered against Borrower A, notice of which was provided to the Bank and was included in Borrower A's loan files.

99. In the years immediately preceding the Bank's failure, Borrower A repeatedly told Defendants Maddox, Figlewski and Hall about Borrower A's financial problems and inability to repay Borrower A's loans to the Bank.

100. In 2009, Borrower A repeatedly notified Defendants Figlewski, Hall, and Maddox that he was unable to repay his loans to other institutions and that the

foreclosure by other banks on Borrower A's loans would start a wave of defaults on all of the approximately $18 million of Borrower A loans held by the Bank at the time.

101. In 2009 and early 2010, Borrower A was repeatedly asked by Defendants Hall and Figlewski, "How are you going to pay us? What can we work out to have Superior get paid?" Borrower A repeatedly informed the Bank of his inability to make payments on his loans. At the January 19, 2010 FLC meeting, Defendants Figlewski, Maddox, Pomeroy and Hall approved Borrower A for a $25,000 unsecured credit card "to pay expenses."

102. Defendants Figlewski, Hall, Maddox, and Scott had each reviewed Borrower A's credit files and were fully aware of Borrower A's financial difficulties and that the balance of the Gateway loan was not collateralized. Nevertheless, in violation of the Bank's internal policies and procedures, as well as applicable regulatory policies of the OTS, at the July 13, 2009 FLC meeting, Defendants Figlewski, Hall, Maddox, and Scott approved the renewal of the Gateway loan for an additional six months.

103. During 2009 and 2010, Borrower A repeatedly told Defendants Figlewski, Hall, and Maddox about his financial problems and his inability to repay his loans to the Bank.

104. During 2009, Borrower A also repeatedly notified Defendants Figlewski, Hall, and Maddox of his inability to repay loans to other financial institutions.

105. In response to the notifications by Borrower A that he could no longer maintain debt service coverage at the Bank and other financial institutions, Defendants Figlewski, Hall, Maddox, Pomeroy and Scott contrived ways to keep Borrower A afloat by either buying these other defaulting loans from other financial institutions or finding a third party to whom it could extend a loan to purchase the non-performing Borrower A loan, regardless of such a third party's ability to repay the loan.

106. In an April 28, 2010 memorandum, Defendant Figlewski informed Defendants Hall, Scott, and White that Borrower A's current TCE was $22,072,300, "[t]he three plus year work-out's structure has always taken numerous turns… ;" and that 30 days earlier, an outside lender initiated foreclosure on five of Borrower A's student housing properties. Defendant Figlewski's memorandum also described the status of Borrower A's seven outstanding loans with the Bank, plainly identified Borrower A's cash flow problems, and further stated that outdated appraisals, including two dated from 2004 and one from 2005, were being relied upon to support Borrower A's loans.

107. On May 3, 2010, Defendant White, who had reviewed Defendant Figlewski's detailed memorandum recounting Borrower A's litany of problems and further reviewed Borrower A's relevant loan files, wrote a "Memo to Files" regarding his review of the Borrower A relationship. Defendant White's memorandum stated that he had spoken with Defendants Figlewski and Scott about the Borrower A relationship and that he had reviewed Defendant Figlewski's detailed memorandum recounting all of Borrower A's outstanding issues.

108. Despite his knowledge of the Borrower A relationship as presented by Defendant Figlewski and his own review of the Borrower A relationship and underlying documentation, Defendant White stated falsely and without support in his "Memo to Files" that the Borrower A relationship could potentially be impaired as of the March 31, 2010 quarter-end, that it was not possible to determine the level of impairment for Borrower A's loans, and that Borrower A's overall relationship should only be reflected as a "potential problem loan" without increasing the corresponding ALLL.

109. As of June 30, 2009, the ALLL for the Gateway loan should have been increased by $2,049,402 to write off the full value of the remaining balance of the loan because there was no collateral remaining and Borrower A had informed the Bank that he was unable to repay the loan. Defendants Figlewski, Hall, Maddox,

and Scott knew of the impairment but failed to properly account for the loan and, instead, improperly extended and renewed it.

110. As of March 31, 2010, the ALLL for the Gateway Tallahassee Loans should have been increased by no less than $1,727,533. Defendants Figlewski, Maddox, Hall, and Scott knew of the significant evidence of impairment but failed to properly account for the loans and, instead, improperly extended and renewed them.

111. By April 2010, Defendant White had been presented by Defendant Figlewski with all of the key evidence regarding Borrower A's lending relationships with the Bank. Defendant White (1) recommended no action to impair the Gateway Loan or the Gateway Tallahassee Loans or to adjust the corresponding ALLLs, (2) took no steps to raise the issue with Superior's outside auditors, and (3) subsequently falsely represented to the outside auditors that adequate provisions had been made for loan losses.

2. **<u>The Ameris Loans (Defendants Figlewski, Hall, Maddox, Pomeroy, Scott, and White)</u>**

112. On April 2, 2008, two one-year loans were extended by Ameris Bank ("Ameris") to two separate Borrower A entities in the amounts of $2,317,005 and $3,447,524 (the "Ameris Loans").

113. The Ameris Loans were made to refinance two pre-existing loans originated at Ameris' predecessor, which had originally been used to purchase two separate properties, Old Fields and Bailey's Mill. Old Fields consisted of approximately 1,100 acres of property in Jefferson County and Leon County, Florida, intended to be used for a hunting plantation, but which was subject to an easement to protect Indian mounds. Bailey's Mill consisted of approximately 437 acres of land in Jefferson County, Florida, 40% of which was wetlands.

114. On April 2, 2009, both Ameris Loans came due, but Borrower A was unable to repay either loan.

115. On July 28, 2009, Borrower A received notices of default on both loans from Ameris.

116. Borrower A had discussions with Defendant Hall about Borrower A's need for the Bank to acquire the Ameris Loans.

117. On July 30, 2009, the Ameris workout loan officer emailed Borrower A's CFO stating, "So far, your only plan is for Ameris to loan you more money-not going to happen." Later that day, Borrower A's CFO contacted the Bank's Special Asset Department about buying the Old Fields and Bailey's Mill loans from Ameris. At the time, the majority of Borrower A's loans with the Bank were past due.

118. On August 15, 2009, Ameris sent a demand letter to Borrower A threatening foreclosure on the properties used as collateral for the Ameris Loans.

119. Defendants Figlewski and Hall began to discuss whether to buy the Ameris Loans to prevent cross-defaults on all of Borrower A's loans, including those with the Bank.

120. As part of preparing the loan package, a Bank employee reporting to Defendant Hall ("Hall's subordinate") was responsible for obtaining appraisals for the Bank for the collateral securing the Ameris Loans.

121. On or about November 5, 2009, Borrower A called Defendant Hall and requested that the Bank use a specific appraiser (the "Borrower A Appraiser") and to obtain the Borrower A Appraiser's prior appraisals from Ameris. On October 28, 2009, Hall's subordinate had instructed a Bank employee reporting to him not to use the Borrower A Appraiser. By November 2, 2009, the Bank had selected, consistent with its written policies and procedures regarding independent appraisals, an appraiser different from the Borrower A Appraiser. By November 5, 2009, prior to Borrower A calling Defendant Hall, Defendant Hall's subordinate had rejected multiple requests from Borrower A, to engage the Borrower A Appraiser to conduct the appraisals.

122. During the November 5, 2009 telephone call to Defendant Hall, Borrower A informed Defendant Hall that using the Borrower A Appraiser to value the property securing the Ameris Loans would be the best way for the Bank to recognize value and to advance the Bank's purchase of the loans. Borrower A also told Defendant Hall that an appraisal on the properties performed by anyone other than the Borrower A Appraiser would reduce the properties' reported value.

123. On November 9, 2009, Defendant Hall instructed Hall's subordinate to use the Borrower A Appraiser and to terminate the appraiser who had been engaged by the Bank to appraise the collateral. The appraiser previously engaged by Hall's subordinate was then relieved of the appraisal assignment, and the Borrower A Appraiser was engaged to perform the appraisal.

124. By instructing his subordinate to use the Borrower A Appraiser to value the Ameris Loans collateral, Defendant Hall violated the Bank's internal policies and procedures, as well as applicable OTS regulations, both of which prohibited the use of a borrower-selected appraiser.

125. The Bank relied upon the Borrower A Appraiser to value the real estate serving as collateral for the Ameris Loans, including an appraisal that valued one property at $2.2 million, despite the fact that the State of Florida had obtained two

independent appraisals that valued the same property at $1 million and $1.3 million, respectively.

126. The credit files for the Ameris Loans contained information regarding Borrower A's extreme financial difficulties and revealed that the real estate taxes for the properties that collateralized the loans were delinquent for 2007 and 2008.

127. On December 17, 2009, Defendant Figlewski sent an email to Defendant Hall stating, "…[Borrower A] needs Ameris Bank gone on Bailey's Mill" and "As a practical matter, the financial picture seen through 2008 Federal Tax Returns, will not be cause for celebration. We will need to focus on the debt engineering in [Borrower A's] Empire during 2009."

128. On December 18, 2009, after having reviewed the credit files for the Ameris Loans, Defendants Figlewski and Hall executed a Credit Approval Request to acquire the Ameris Loans on behalf of the Bank's Florida division.

129. The purchase of the Ameris Loans was approved on December 31, 2009 by Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott.

130. The Ameris Loans were acquired during the quarter ended March 31, 2010. At the time of acquisition, the Ameris Loans were already impaired and should have been recorded as such in Superior's books, records, and accounts. By March 31, 2010, the ALLL (or another account) should have been increased by no

less than $2,739,000 due to the impairment of the Ameris Loans. Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott had knowledge of significant impairment at the time the Ameris Loans were acquired and by March 31, 2010, and knowingly acted to improperly account for these loans.

131. By April 2010, Defendant White had been presented by Defendant Figlewski with all of the key information regarding Borrower A's lending relationships with the Bank, yet he took no steps to impair the Ameris Loans, to adjust the corresponding ALLL, or to raise the issue with Superior's outside auditors, and he subsequently represented falsely to them that adequate provisions had been made for loan losses.

132. At June 30, 2010, the Ameris Loans were being Held for Sale by Superior at less than 50 cents-on-the-dollar, yet no corresponding impairment or ALLL adjustment occurred.

133. In early 2012, the Old Fields and Bailey's Mill properties were foreclosed upon. In May 2013, Old Fields was sold for $1.1 million, and in late 2012, Bailey's Mill was sold for just under $500,000.

3. The Mezzanine Loans (Defendants Figlewski, Hall, Maddox, Scott, and White)

134. On July 9, 2009, well after Defendants Figlewski, Hall, and Maddox became aware of Borrower A's inability to maintain debt service coverage on his

existing loans, the Bank lent one of Borrower A's corporate entities an additional $2.5 million without obtaining any appraisals or performing any evaluations on the underlying collateral (the "Mezzanine Loan") – in violation of both the Bank's internal policies and procedures, as well as applicable OTS regulations.

135. A June 25, 2009 Problem Asset Report stated that the Mezzanine Loan would be collateralized by an ownership interest in five student housing projects located in Tallahassee, Florida and an assignment of excess cash flow generated by these properties up to $20,000 each month.

136. Defendants Figlewski, Hall, and Maddox knew that the referenced assignment of excess cash flow that purported to collateralize the Mezzanine Loan was invalid, as: (a) they had contemporaneous knowledge that Borrower A's operations had essentially no monthly cash flow; and (b) they had been informed in writing by Borrower A on May 12, 2009 that any excess cash flow in the referenced student housing projects had already been assigned to a loan servicer unrelated to the Bank.

137. In February 2010, Defendants Figlewski, Hall, and Maddox exchanged multiple emails noting that Borrower A needed additional funds to pay taxes, service various loans, and pay other expenses.

138. On February 26, 2010, Defendant Figlewski received a letter from the senior lenders for the Mezzanine Loan, notifying the Bank that Borrower A's corporate entities were in default as of July 1, 2009 on four of the student housing loans totaling $28.68 million. Borrower A also emailed Defendant Hall at this time to notify him that the senior lender was moving to foreclose on the properties.

139. On or about March 28, 2010, foreclosure action was initiated against the properties. Defendants Figlewski, White, Hall, and Scott were aware of the foreclosure action.

140. As of March 31, 2010, the ALLL for the Mezzanine Loan should have been increased by no less than $1,249,562. Defendants Maddox, Figlewski, Hall, White, and Scott had direct knowledge of the significant evidence of impairment and knowingly acted to improperly account for this loan.

141. On April 29, 2010, Borrower A sent Defendant Hall an email regarding the default notice received for the Mezzanine Loan, stating, "I am currently unable to cure the default, a copy is attached."

142. By April 2010, Defendant White had been presented by Defendant Figlewski with all of the key information regarding Borrower A's lending relationships with the Bank. As he did with respect to the other Borrower A loans, Defendant White took no steps to impair the Mezzanine Loan, to adjust the

corresponding ALLL, or to raise the issue with Superior's outside auditors, and he subsequently represented falsely to them that adequate provisions had been made for loan losses.

143. At June 30, 2010, the Mezzanine Loan was being actively marketed for sale by Superior at less than 50 cents-on-the-dollar, yet no corresponding impairment or ALLL adjustment occurred.

4. The Velda Dairy Loan (Defendants Maddox, Pomeroy, Figlewski, Hall, Scott, and White)

144. On November 1, 2004, the Bank's predecessor extended a one-year $1,074,925 loan to Borrower A to buy 25.57 acres of land in Tallahassee, Florida to be developed into 27 residential lots (the "Velda Dairy Loan").

145. Borrower A was unable to repay the loan at the end of its initial term. The loan was renewed multiple times between 2005 through 2010, despite the lack of any economic justification for doing so in the loan file.

146. On December 26, 2007, the Velda Dairy Loan was increased by $300,000 with new funds then used to reduce Borrower A's delinquent Lighthouse Walk loan.

147. At the March 15, 2010 FLC meeting, Defendants Maddox, Figlewski, Pomeroy, Hall and Scott approved the renewal of the Velda Dairy Loan for an additional six months, with no payments due until maturity. This renewal was

based upon an appraisal dated August 8, 2004 which valued the raw land "As Is" at $2 million.

148. Certain of the property appraised on August 8, 2004 was sold by the time of a subsequent appraisal dated October 4, 2010; the October 24, 2010 appraisal valued the remaining collateral at $570,000.

149. As of March 31, 2010, the ALLL for the Velda Dairy Loan should have been increased by no less than $510,774. Defendants Maddox, Pomeroy, Figlewski, Hall, Scott, and White knew that the loan was significantly impaired but knowingly acted to account for the loan improperly.

5. The Cape San Blas Loan (Defendants Maddox, Pomeroy, Figlewski, Hall, Scott, and White)

150. On December 7, 2004, the Bank granted a one-year, interest-only $1,650,000 loan to Borrower A (the "Cape San Blas Loan") for five vacant lots on an acre of raw land in Cape San Blas, Florida. The loan, the balance of which was reduced to $820,825 from the sale of two lots in April and August 2005, was renewed multiple times from 2006 through 2010.

151. At the July 13, 2009 FLC meeting, Defendants Figlewski, Maddox, Scott, and Hall approved the renewal of this loan for six months using an appraisal dated September 13, 2004 with an "As Is" value of $2.2 million.

152. Because Borrower A was unable to repay the Cape San Blas Loan, there were multiple renewals, including a renewal on January 27, 2010 approved at the BLIC meeting attended by Defendants Hall, Bailey, and White.

153. Appraisals obtained in November 2010 and September 2011 reported the value of the three remaining vacant lots at $230,000.

154. As of June 30, 2009, the ALLL for the Cape San Blas Loan should have been increased by no less than $397,054. Defendants Maddox, Figlewski, Hall and Scott knew that the loan was significantly impaired but knowingly acted to account for the loan improperly.

6. **The Bluffs At The Cape Loan (Defendants Maddox, Figlewski, Hall, and Scott)**

155. On April 28, 2005, the Bank extended a $2.8 million, one-year loan to a Borrower A entity to acquire four acres of raw land in Cape San Blas, Florida ("The Bluffs at the Cape Loan"). The loan was renewed six times between May 31, 2006 and January 29, 2010 because Borrower A could not repay the loan.

156. An internal credit memorandum dated May 25, 2007 noted that Borrower A did not move forward with development due to increased construction costs and a sharp drop in the demand for real estate.

157. A December 6, 2007 Operating Agreement signed by Defendant Maddox acknowledged that the loan was in default, and that Superior, at the request of Borrower A, had granted a forbearance to Borrower A.

158. Problem Asset Reports dated January 9, 2008 and June 25, 2009, respectively, noted that Borrower A's companies notified Superior "that current recurring cash flow is inadequate to support monthly payment obligations," and that the most recent appraisal was dated April 11, 2005. The latter report also noted that Borrower A had a negative net worth of approximately $2.96 million, a decrease from the approximately $67.7 million listed in the January 2008 report.

159. At the July 13, 2009 and July 20, 2009 FLC Meetings, Defendants Figlewski, Maddox, Hall and Scott approved the renewal of the interest-only Bluffs at the Cape Loan for six months using an appraisal dated April 11, 2005 with an "As Is" value of $3.5 million. The FLC minutes stated that this loan was being renewed "to allow additional time to determine the feasibility of constructing an income-producing rental property on the site." A July 20, 2009 internal memo noted that many of Borrower A's entities, including the entity that owned the Bluffs at the Cape property, were "seriously delinquent" in their tax payments.

160. No development ever occurred on this property and Borrower A stopped making loan payments.

161. Defendant Figlewski's April 28, 2010 memorandum to Defendants Hall, Scott, and White, previously referenced herein, suggested that The Bluffs at the Cape Loan be discounted by 50% from the 2005 appraisal. On October 1, 2010, this property was appraised for $600,000.

162. As of June 30, 2009, the ALLL for the Bluffs at the Cape Loan should have been increased by no less than $1,265,224. Defendants Maddox, Figlewski, Hall and Scott had direct knowledge of the significant evidence of impairment and knowingly acted to improperly account for this loan.

7. **The Lighthouse Walk Loan (Defendants Maddox, Figlewski, Hall, and Scott)**

163. On April 29, 2005, the Bank extended an $8 million one year, interest-only loan to a Borrower A entity to acquire 8.75 acres of raw land in Gulf County, Florida. The land was never developed.

164. The loan was renewed six times between May 31, 2006 and January 29, 2010 because Borrower A could not repay the loan.

165. An internal credit memorandum dated May 25, 2007 noted that Borrower A's intention was to develop 26 single family lots in a subdivision but that this project did not move forward with development due to increased construction costs and a sharp drop in the demand for real estate.

166. On December 21, 2007, Defendant Maddox caused $900,000 of funds from two other outstanding Borrower A loans at the Bank to be used to make principal payments on this loan.

167. Based upon a February 18, 2005 appraisal, the "As Is" value was $9.4 million.

168. At the July 13, 2009 and July 20, 2009 FLC Meetings, Defendants Maddox, Figlewski, Hall, and Scott approved the renewal of this loan for six months using an appraisal dated August 13, 2007 with an "As Is" value of $5.7 million. At the time of these meetings, the outstanding loan balance of $7,096,216 was clearly impaired based on the outdated appraisal and Borrower A's inability to repay this loan yet an impairment to recognize this $1.396 million difference was not recorded. The FLC minutes stated that this loan was being renewed, "to allow additional time to determine the feasibility of constructing an income-producing rental property on the site."

169. Although on July 21, 2009, proceeds from Borrower A's Mezzanine loan were used to make a $93,873 interest payment on this loan, this loan remained past due the following day, resulting in another renewal on August 20, 2009.

170. Defendant Figlewski's April 28, 2010 memo suggested that this loan be discounted by 50% from the 2007 appraisal.

171. The appraised value of this property declined to $1.25 million by October 1, 2010, and to $750,000 by October 3, 2011.

172. As of June 30, 2009, the ALLL for the Lighthouse Walk loan should have been increased by no less than $3,432,617. Defendants Maddox, Figlewski, Hall, and Scott knew that the loan was significantly impaired but knowingly acted to account for the loan improperly.

8. The Breakers Properties Loans (Defendants McKinnon, Bailey, Maddox, Figlewski, Pomeroy, Hall, Scott, Parrish, Roberts)

173. In or around May 2008, representatives of the estate of deceased Borrower C met with a loan officer at the Bank's Panama City, Florida branch office to inform him that the estate could not repay an existing $10.5 million Bank loan to two entities Borrower C had controlled (the "Borrower C Loans"). The Borrower C Loans were collateralized by properties located in Panama Beach City, Florida that Borrower C planned to develop.

174. Defendant Hall directed the loan officer for the Borrower C Loans to set up a meeting with Earl Durden (who stepped down as a director of Superior and the Bank in April 2008, but was reappointed to the boards of both Superior and the Bank in October 2009), Borrower B, and Defendant Roberts (who was a current outside director of Superior) to ask them to take over the Borrower C Loans.

175. On or about June 24, 2008 in Panama City, Florida, the meeting, led by Defendant Hall, was attended by Durden, Borrower B, the loan officer for Borrower C, and Defendants Figlewski, Maddox, and Roberts. During the meeting, the financial condition of Borrower C's estate was discussed and information regarding Borrower's C's financial condition was presented to those present.

176. As a result of the meeting, Durden, Borrower B, and Defendant Roberts agreed, as requested by the Bank, to assume the non-performing Borrower C Loans. Subsequently, the Bank structured two interest-only, non-recourse loans, each for three years, totaling $12.5 million (together, the "Breakers Properties Loans"). As a further result of the meeting, Defendant Roberts knew that in order to avoid impairing the Borrower C Loans, the Bank needed to place the Borrower C Loans somewhere until they could be moved to another institution or the Bank could take them back.

177. Defendants Figlewski, Hall, Maddox, Parrish, and Roberts further structured the Breakers Properties Loans such that: (a) personal guarantees were not required or sought from Durden, Borrower B, and Defendant Roberts; and (b) letters of credit were, in fact, extended by the Bank to Durden, Borrower B, and Defendant Roberts that provided funding for them to make any principal payments

that would become due under the Breakers Properties Loans. As a result of the structure of the Breakers Properties Loans, Defendant Roberts understood that he would not be personally required to repay the Breakers Properties Loans, and he never intended to repay the Breakers Properties Loans.

178. On July 24, 2008, the Breakers Properties Loans were approved by Defendants Bailey, Parrish, and Scott, who were each directly aware of the non-recourse, non-guaranteed, no-borrower-contribution aspects of the Breakers Properties Loans.

179. The proceeds of the Breakers Properties Loans were used to immediately pay off the Borrower C Loans and to advance $2 million to fund an interest reserve for three years for the Breakers Properties Loans, such that, on these interest-only loans, the Bank itself would be pre-funding all regular interest payments on the loans after having provided letters of credit for the principal payments.

180. In violation of the Bank's internal policies and procedures, as well as applicable OTS regulations, none of the new borrowers contributed any capital or provided any guarantees, nor were there any actual plans for the continued development of either of the underlying development projects. As a result of the conduct of Defendants Figlewski, Hall, Maddox, Parrish, and Roberts in

structuring the Breakers Properties Loans, the impaired nature of the Borrower C Loans and the non-performing status of the Breakers Properties Loans were obscured from the Bank's records, from Superior's financial statements in its public filings with the Commission, from the OTS examiners, and from Superior's and the Bank's regulatory submissions to the OTS.

181. On October 6, 2009, Durden was re-appointed to the Board of Directors of both Superior and the Bank. On October 13, 2009, Superior issued a false and misleading press release that was filed in a Form 8-K signed by Defendant Bailey, which stated that Durden was "re-elected" as a director of Superior and of the Bank. Durden had not been "re-elected" by Superior's shareholders.

182. An outside loan review company retained by a third-party considering an equity investment in Superior identified the Breakers Properties Loans on its "Top 10 Losses" list as of May 26, 2010, which list was provided to Defendants Figlewski and Scott.

183. Defendants Figlewski, Hall, and Maddox, who participated in writing the Credit Memos and Credit Approval Reports during the life of the Breakers Properties Loans, each was fully aware of the non-recourse, pre-funded, non-contribution, non-arm's length nature of the Breakers Properties Loans.

184. At the time Borrower B entered into the Breakers Properties Loans he lacked the financial ability to repay the Breakers Properties Loans or any of his three other Bank loans. Borrower B's financial condition was documented in the Breakers Properties Loans files, and was known to each of Defendants Figlewski, Hall, Maddox, McKinnon , Pomeroy, and Scott. Defendant McKinnon was Borrower B's primary loan officer.

185. Borrower B's financial condition was discussed with Defendant Roberts present, and information regarding Borrower B's financial condition was presented to Defendant Roberts. Defendant Roberts either knew of Borrower B's financial condition or acted in a severely reckless manner with respect to his understanding of Borrower B's financial condition.

186. A March 1, 2010 Credit Approval Request and Credit Memorandum noted that Borrower B was personally guarantying $30 million in real estate mortgages across multiple banks. The Bank's records show that Borrower B's September 9, 2010 personal financial statement reflected a net worth of negative $13.7 million.

187. On August 3, 2010, Defendant Figlewski emailed Defendants Maddox, Pomeroy, McKinnon, and Durden's loan officer stating, "Pursuant to the commentary at FLC that Chuck Roberts wants to walk from his letter of credit, I

would like to discuss the possibility of calling the l/c and decreasing the loan balance. As Durden's is in default, that's an option we should explore as well." Durden's loan officer responded to Defendant Maddox, stating, "I missed the discussion regarding Chuck's position. He is actually considering defaulting on L/C?" Defendant Maddox responded to Durden's loan officer, stating, "...the executive reaction will certainly be interesting given a Board member [sic] and major relationship."

188. On August 4, 2010, Defendant Maddox emailed Defendants Figlewski and Hall, stating, "Keep in mind that the letters of credit are unsecured and if we draw on them we do pay down Breakers, but we replace that paydown with 3 unsecured individual loans. We would not have ownership control of Breakers unless Deed in Lieu or foreclosure."

189. In September 2010, Defendants Figlewski, Hall, and Maddox reviewed and signed a Risk Rating Change Request to downgrade the Breakers Properties Loans, but increased the ALLL by less than $7,000.

190. At September 30, 2010, the ALLL for the Breakers Properties Loans should have been increased by no less than $5.2 million. Defendants Maddox, Figlewski, and Hall knew that the loan was significantly impaired but knowingly

acted to account for the loan improperly, and improperly extended and renewed the loan.

191. On October 1, 2010, Defendants Figlewski, Hall, McKinnon, and Pomeroy exchanged emails discussing the fact that Borrower B's divorce settlement required Borrower B to pay his ex-wife $39 million and that Borrower B's liquidity had "vanished" as a result of the settlement.

192. On October 1, 2010, Defendant Figlewski emailed Defendant Maddox, stating, "Should not be a FAS 114 – I'll need to check on the appraisal. It may have been requested due to Durden/Parrish/Roberts status changes." Defendant Maddox then emailed Durden's loan officer and others stating, "FYI as to one case of an incorrect directive from Credit Admin." The email further stated: "Unless directed by John directly – do not complete a FAS 114 or engage an appraisal as a result of a Credit Admin request unless we have discussed and agree it is necessary."

193. The Breakers Properties Loans violated internal Bank policies and procedures and applicable OTS regulations in multiple respects.

194. Bank loan policy prohibited the extension of commercial credit to "land flips," to the purchase of raw land with no plan or capacity to develop, to 100% financing, and to loans for restaurant operations or the associated real estate.

195. As the loan files for the Breakers Property Loans indicate, there were no plans to develop the underlying real estate. Rather, the borrowers for the Breakers Properties Loans were going to "inventory" the land until a point in time when the market began to recover. Thus, the loan was made to fund land speculation.

196. The Breakers Properties Loans further violated the Bank's internal policy against making loans without obtaining guarantees from all the borrowers.

197. The 36 month-term also exceeded the 18 month-term allowed for land (acquisition) loans by the Bank's internal policies.

198. The Breakers Properties Loans also violated Section 215.4 of the OTS's Regulation O, prohibiting a loan to an insider not made on terms normally made to non-insiders, involving more than normal risk of repayment with other terms unfavorable to the lender.

199. The Breakers Properties Loans were neither normal nor customary, and represented preferential treatment to a director, as the non-recourse feature was not available to the public.

200. Defendants Bailey, Parrish, and Scott were aware of the condition of the Borrower C Loans, and Defendant Roberts knew or acted in a severely reckless

manner with respect to his understanding of the condition of the Borrower C Loans.

201. Defendants Bailey, Scott, Parrish and Roberts were fully aware of the circumstances surrounding the takeover of these loans by insiders, including the non-arm's length nature of the terms offered to Superior's insiders and to Borrower B.

202. Defendants Bailey, Parrish, Roberts, and Scott each signed Superior's 2008 and 2009 Forms 10-K, registration statements in 2009 and 2010, and reviewed the 2009 and 2010 Proxy Statements prior to issuance.

203. These Form 10-Ks and registration statements all falsely stated that: "The Corporation has entered into transactions with its directors, executive officers, significant stockholders and their affiliates (related parties). Such transactions were made in the ordinary course of business on substantially the same terms and conditions, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other customers, and did not, in the opinion of management, involve more than normal credit risk or present other unfavorable features."

204. The 2009 and 2010 Proxy Statements stated that: "Superior Bancorp believes that the foregoing transactions were made on terms and conditions reflective of arms' length transactions."

205. These statements in Superior's 2008 and 2009 Forms 10-K, registration statements in 2009 and 2010, and the 2009 and 2010 Proxy Statements were rendered false by the Breakers Properties Loans, and the statements were known to be false when made by Defendants Bailey, Parrish, Roberts, and Scott.

206. Beginning on March 16, 2009 (relating to Superior's 2008 Form 10-K) and through November 15, 2010 (Superior's final Form 10-Q filing made with the Commission), Defendant Bailey signed each Superior management representation letter to Superior's outside auditors in conjunction with all Forms 10-Q and Forms 10-K during this time period, which letters stated: "[r]elated party relationships and transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements and guarantees have been properly recorded or disclosed in the financial statements." Defendant Bailey knew such statements were false when he made them.

9. The Walker-Whitney Loan (Defendants McKinnon, Maddox, Pomeroy, Figlewski, Hall, and Scott)

207. On or about January 24, 2006, the Bank entered into a loan for up to $17,500,000 for the development of a 56-unit condominium project in St.

Petersburg, Florida (the "Walker-Whitney Loan"). The Walker-Whitney Loan required the payment of interest only during the two-year term of the loan, with a balloon payment due at maturity in February 2008. Defendant McKinnon was the primary loan officer for the Walker-Whitney Loan.

208. The principal for the Walker-Whitney Loan ("the Walker-Whitney Principal") was a member of the Bank's Florida Advisory Board. The Florida Advisory Board consisted of Florida business persons who helped Bank management address the needs of commercial customers while maximizing Superior shareholder value. Florida Advisory Board members were compensated for attending meetings.

209. The original appraisal supporting the Walker-Whitney Loan, dated October 6, 2005, listed an "As Is" market value of $2.8 million along with a $21.4 million value which was predicated upon a bulk sale of all condominium units proposed to be built, upon the projected completion of the project in February 2007.

210. Such a bulk sale never occurred, resulting in the borrower not having sufficient capital to repay the principal due and owing as of February 2008, the original due date for the loan.

211. Despite the delinquent status of the Walker-Whitney Loan, and lack of the cash flow on which the loan was premised, Defendants McKinnon, Figlewski, and Pomeroy recommended to the FLC that the loan be renewed four separate times between 2008 and 2009. Each time, the FLC, of which Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott were members at the time, voted to extend the Walker-Whitney Loan utilizing an unmodified version of the October 6, 2005 appraisal to support the loan value.

212. At the time of each of the loan renewals, as documented in internal emails, FLC minutes, and related documents within the loan file, Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott knew that the borrower was unable to repay the principal balance from either sales of condominium units or from the Walker-Whitney Principal's personal assets.

213. An internal Bank document created on or around February 12, 2008 noted that although 13 units were under contract, the buyers of these 13 units were in litigation to rescind their contracts, and the "…project has had some sales fallout…."

214. On or about March 5, 2008, the Walker-Whitney Loan was modified to change the maturity date from February 5, 2008 to August 5, 2008.

215. On or about August 5, 2008, the Walker-Whitney Loan was modified to require six unit sales in order to extend the maturity date an additional 6 months to August 5, 2009.

216. On or about September 15, 2008, Defendant McKinnon signed a Credit Approval Request to extend the maturity of the Walker-Whitney Loan to February 5, 2009. This Credit Approval Request noted that the last appraisal obtained was dated October 6, 2005. The Walker-Whitney Loan was renewed on September 26, 2008.

217. The Walker-Whitney Loan files indicated that, as of March 2009, no condominium units had been sold for a year. A March 16, 2009 Loan Modification Form, signed by Defendants McKinnon, Pomeroy, and Figlewski stated: (a) the maturity was being extended from February 5, 2009 to August 5, 2009 by waiving the requirement that the borrower sell six additional units by February 5, 2009, (b) the borrower had continued to lower unit prices, (c) "This is after almost a year of no sales," and (d) even with reductions in the asking prices, a total of 38 of the 56 contemplated units remained unsold. This Loan Modification Form was presented to the FLC on March 16, 2009. At this FLC meeting, Defendants Figlewski, Maddox, Scott, Pomeroy, and Hall approved the modification to extend the maturity of the Walker-Whitney Loan.

218. On or about March 17, 2009, Defendant McKinnon sent a letter to the Walker-Whitney Principal stating that the Bank was waiving the sales requirement from August 5, 2008, which required six unit sales in order to extend the maturity date an additional six months to August 5, 2009, and that the new maturity had been automatically extended to August 5, 2009.

219. On or about July 29, 2009, Defendant McKinnon requested by email that the Walker-Whitney Principal remit $41,087 to cover his June 2009 principal and interest payments along with his July 2009 interest payment on a separate personal loan from the Bank to bring that loan, with an outstanding balance of $2,478,155, current. Defendant McKinnon also told the Walker-Whitney Principal that the June principal and interest payment, "…will keep you from going 30 day [sic] past due, which gets reported to the board." In the July 29, 2009 email, Defendant McKinnon also told the Walker-Whitney Principal that federal bank examiners were currently on site reviewing loans and that he was trying to keep them from "further downgrading" the Walker-Whitney project "but this may be impossible to avoid if your personal loan continues to go 30 days past due."

220. By September 30, 2009, Defendants McKinnon, Figlewski, Hall, Maddox, Pomeroy, and Scott knew of the significant problems with the Walker-Whitney development project, the delinquent status of the Walker-Whitney Loan,

and the delinquent status of the Walker-Whitney Principal's personal loan with the Bank, but took no steps to properly account for the Walker-Whitney Loan as impaired. Instead, in violation of the Bank's internal policies and procedures, as well as applicable OTS regulations, each of Defendants McKinnon, Figlewski, Hall, Maddox, Pomeroy, and Scott recommended and/or voted to extend the loan multiple times despite the outdated 2005 appraisal.

221. Each of Defendants McKinnon, Figlewski, Hall, Maddox, Pomeroy, and Scott was aware of the Walker-Whitney Principal's non-performance under his personal loan with the Bank, which itself should have been impaired due to the Walker-Whitney Principal's inability to repay full principal and interest.

222. As of September 30, 2009, the ALLL for the Walker-Whitney Loan should have been increased by no less than $4.2 million. Defendants McKinnon, Figlewski, Hall, Maddox, Pomeroy, and Scott knew of the significant evidence of impairment, but caused the loan to be extended and renewed four times and took no steps to account for the loan properly.

223. On or about May 5, 2010, Defendant McKinnon stated in an internal memorandum: "Due to the fact that unit sales over the last 6 months have not materialized, the borrower has just proposed to the bank that he hold an "Events

Sale" at the project in June of 2010." The stated goal was to sell all remaining units at a one-day event.

224. Moreover, at the same time that Superior was treating the Walker-Whitney Loan as unimpaired for accounting purposes, the Bank was offering to sell the loan to third-party investors for approximately 50 cents-on-the-dollar.

225. Defendant Scott knew the Walker-Whitney Loan was impaired but he attempted to have the loan removed from Superior's books and records without taking the necessary impairment. Internal emails exchanged in September 2010 among Defendants McKinnon, Figlewski, Hall, and Pomeroy discuss the fact that Defendant Scott "wants the Walker Whitney loan to be gone by the end of the month."

226. On or about September 9, 2010, Defendant McKinnon sent an email to Defendants Pomeroy, Hall, and Figlewski stating, "I understand that Marvin [Scott] wants the W W Plaza loan to 'go away' by the end of the month. The attached represents how I propose making that happen by a sale of the WW Plaza note to [the Walker-Whitney Principal]. I am open to other suggestions but remember for [the Walker-Whitney Principal] the tax and liability issues are to [sic] great for him to take title to the actual W W Plaza real estate and the recording of a new mortgage with doc stamps and recoding [sic] fees makes the

transaction to [sic] expensive for the borrower." Defendant McKinnon continued: "At this point, it is my recommendation that we have a new loan structure approved for [the Walker-Whitney Principal] by the end of the month but not close on the new structure until all 22 units under contract at WW Plaza have closed. I believe that we are forcing this modification. We will have a good story and good structure to present to the regulators or investors by the end of the month on this credit. I think we should allow the WW Plaza loan to run its normal course."

227. On or about September 16, 2010, Defendant Pomeroy sent an email to Defendants McKinnon, Hall, and Figlewski, stating: "As we discussed, Marvin [Scott] wants the Walker Whitney loan to be gone by the end of the month."

228. On or about September 30, 2010, Defendants Figlewski, Hall, McKinnon, Pomeroy, and Scott unilaterally acted to increase the Walker-Whitney Principal's personal loan – which was already delinquent and should have been treated as impaired – by an additional $7.3 million (bringing the outstanding principal balance to $9.7 million) of which $7.2 million was then used to immediately "pay-off" the Walker-Whitney Loan. Defendant McKinnon discussed the loan closing with Defendant Scott.

229. Defendants McKinnon, Figlewski, Hall, Pomeroy, and Scott had no reasonable justification for increasing the Walker-Whitney Principal's personal

loan, and did so only to shift the losses from the Walker-Whitney Loan without negatively affecting Superior's books, records, and accounts.

230. On September 30, 2010, Defendant McKinnon sent an email to Defendant Pomeroy stating: "This transaction represents basically a booking entry by Superior Bank." The email further stated: "The [Walker-Whitney Principal] loan gets increased to $9,683,449.41 then we advance from the [Walker-Whitney Principal] loan $7,322,733.36 to pay off the W W Plaza loan (less any late fees which I am waving)."

10. <u>The Walker-Whitney Principal's Personal Loan (Defendants McKinnon, Pomeroy, Figlewski, Hall, and Scott)</u>

231. On or about April 1, 2008, the Bank extended a 90-day personal loan to the Walker-Whitney Principal for up to $2,500,000 (the "Walker-Whitney Principal's Personal Loan"). In or around June 2008, the Walker-Whitney Principal's Personal Loan was renewed, and it was renewed several times thereafter.

232. By July 30, 2008, the Walker-Whitney Principal had fallen behind in his payments on the personal loan, and Defendant McKinnon had become aware that the borrower had inadequate cash flow to service the loan.

233. On or about October 6, 2008, Defendant McKinnon noted in the loan files of the Walker-Whitney Principal's Personal Loan that: (a) the Walker-Whitney Principal had been unsuccessful in refinancing this loan at another financial institution "because of turmoil in the financial markets"; (b) the Walker-Whitney Principal was on the Florida Advisory Board; (c) the interest reserves for this loan had been exhausted; and (d) the latest appraisal was over 12 months old.

234. On or about October 6, 2008, Defendants McKinnon, Pomeroy, and Figlewski, although aware of the information in the preceding two paragraphs, recommended the renewal of the Walker-Whitney Principal's Personal Loan for an additional 12 months.

235. On or about October 31, 2008, the Walker-Whitney Principal's Personal Loan was renewed. On or about May 15, 2009, Defendants McKinnon, Pomeroy, and Figlewski signed a Risk Rating Change Request form which noted that: (a) the Walker-Whitney Principal was struggling with the monthly interest payments; and (b) the Walker-Whitney Loan had been downgraded.

236. On or about July 29, 2009, Defendant McKinnon asked the Walker-Whitney Principal to remit $41,087 to cover his June 2009 principal and interest payments, along with his July 2009 interest payment, to bring the Walker-Whitney Principal's Personal Loan current. The outstanding balance on the loan was

$2,478,155. Defendant McKinnon told the Walker-Whitney Principal that making such a payment "…will keep you from going 30 day [sic] past due, which gets reported to the board." Defendant McKinnon also told the Walker-Whitney Principal that federal bank examiners were on site reviewing loans and that he was trying to keep them from "further downgrading" the Walker-Whitney project "but this may be impossible to avoid if your personal loan continues to go 30 days past due."

237. On or about August 28, 2009, Defendant McKinnon wrote a memorandum requesting that the Walker-Whitney Principal's Personal Loan be renewed for an additional 12 months, and noting that the Walker-Whitney Principal had been unable to refinance his loans from the Bank.

238. On or about September 8, 2009, at an FLC meeting, Defendants Maddox, Pomeroy, Figlewski, Hall, and Scott approved the renewal of the Walker-Whitney Principal's Personal Loan to September 2, 2010 even though: (a) the loan was renewed as interest-only; and (b) the support related to the collateral was outdated, including an appraisal done in September 1989, and consisted mostly of broker opinions.

239. As of September 30, 2009, the ALLL for the Walker-Whitney Principal's Personal Loan should have been increased by no less than $1.2 million to account for the loan's impairment at this date.

240. Defendants McKinnon, Pomeroy, Figlewski, Hall, and Scott knew that the loan was significantly impaired but knowingly acted to account for the loan improperly, and improperly extended and renewed the loan.

241. On or about September 23, 2010, Defendants McKinnon, Figlewski, and Scott signed a Credit Approval Request to increase the Walker-Whitney Principal's Personal Loan balance from $2,360,716 by $4,642,477, to $7,003,163, in order for the Walker-Whitney Principal to purchase the outstanding Walker-Whitney Loan.

242. On or about September 27, 2010, at an FLC meeting, Defendants Pomeroy, Figlewski, Hall, and Scott approved the refinancing of the Walker-Whitney Loan by increasing the Walker-Whitney Principal's Personal Loan by $4,642,477, and extending the maturity for 36 months.

243. Defendants McKinnon, Figlewski, Hall, Pomeroy and Scott had no reasonable justification for increasing the Walker-Whitney Principal's Personal Loan in order to facilitate the pay-off of the Walker-Whitney Loan; they did so as an accounting manipulation in order to avoid recognizing loan losses.

244. On September 30, 2010, Defendant McKinnon sent an email to Defendant Pomeroy stating: "This transaction represents basically a booking entry by Superior Bank." He further stated in the email: "The [Walker-Whitney Principal] loan gets increased to $9,683,449.41 then we advance from the [Walker-Whitney Principal] loan $7,322,733.36 to pay off the W W Plaza loan (less any late fees which I am waving)." Defendant McKinnon discussed the loan closing with Defendant Scott.

245. On or about May 31, 2011, Defendant McKinnon sent an email communication in which he stated, "I would have the most knowledge of the [Walker-Whitney Principal's] credit."

246. The Walker-Whitney Principal ultimately defaulted on the Walker-Whitney Personal Loan.

247. At June 30, 2010, the Walker-Whitney Principal's Personal Loan was being actively marketed for sale by the Bank at less than 50 cents-on-the-dollar, but no impairment or ALLL for the loan was taken by Superior.

248. At September 30, 2010, the ALLL for the Walker-Whitney Principal's Personal Loan should have been increased by no less than $4.5 million to account for the loan's impairment at this date. Defendants McKinnon, Pomeroy, Figlewski, Hall, and Scott, who knew of the significant impairment, failed to take

measures to see that the loan was properly accounted for and, instead, improperly extended and renewed it.

11. The Metropolitan 8, LLC Loan (Defendants McKinnon, Pomeroy, Figlewski, Hall, and Scott)

249. On or about July 2007, the Bank's predecessor extended a one-year loan to Metropolitan 8, LLC, an entity controlled by Defendant Parrish, for up to $2,230,000 (the "Metropolitan 8 Loan") to fund the construction of an office building in Tallahassee, Florida. Beginning in or about July 2008, the Metropolitan 8 Loan was renewed multiple times through at least October 15, 2012.

250. On or about June 10, 2008, the Metropolitan 8 Loan was increased to $10,500,000 and its maturity was extended for 18 months, with an option to extend the maturity date by an additional 18 months, for a total term of up to 36 months.

251. By August 2009, Defendant Parrish knew that he would be unable to fully repay the Metropolitan 8 Loan, which was non-performing.

252. On or about August 28, 2009, Defendants Hall and Scott approved a loan modification to allow the Walker-Whitney Principal to assume the Metropolitan 8 Loan, replacing Defendant Parrish and becoming the loan's sole guarantor. Defendant Hall notified Defendant McKinnon, who was the primary loan officer on the Metropolitan 8 Loan, of the loan modifications and the reasons

for them. The last appraisal report obtained by the Bank for the property serving as the loan collateral was dated April 14, 2008, and determined the "As Is" value of the collateral to be $4 million.

253. On or about September 28, 2009, Defendant McKinnon noted in the Metropolitan 8 Loan files that, "The Tallahassee office market has softened according to mid-year 2009 Costar Office Report for Tallahassee." In an email the same day, Defendant McKinnon provided Defendants Pomeroy, Figlewski, Hall, and Scott with the latest proposed loan modification and expressed doubts about the Walker-Whitney Principal's ability to repay the Metropolitan 8 loan based on his cash flow.

254. On September 29, 2009, Defendant Hall instructed a Bank employee to send the Metropolitan 8 Loan modification to Superior's Board of Directors for approval. The same day, Defendants Bailey, Scott and Hall, on behalf of the Bank's Executive Loan Committee, approved the Metropolitan 8 Loan modification, and Defendants Bailey and Scott, on behalf of Superior's Board of Directors, approved the modification.

255. On or about September 30, 2009, Defendant Parrish transferred his ownership of Metropolitan 8, LLC to the Walker-Whitney Principal. At this time, the outstanding balance of the Metropolitan 8 Loan was approximately $9,117,846,

which was secured by collateral with an "As Is" appraised value of $4 million. The Walker-Whitney Principal lacked the ability to repay the full principal and interest on the Metropolitan 8 Loan at the time he assumed the Metropolitan 8 Loan.

256. On or about November 9, 2009, Defendants McKinnon, Figlewski, and Scott signed a Loan Modification Form to extend the maturity of the Metropolitan 8 Loan from December 15, 2009 to July 11, 2010 and to increase the loan amortization from 25 to 30 years. Superior's report on Form 10-Q for the quarter ended September 30, 2009 was filed on November 9, 2009.

257. At September 30, 2009, the ALLL for the Metropolitan 8 Loan should have been increased by no less than $4.4 million. Defendants McKinnon, Pomeroy, Figlewski, Hall, and Scott knew the loan was significantly impaired but took no steps for the loan to be accounted for properly, and, instead, extended and renewed it.

258. On or about May 14, 2010, the Walker-Whitney Principal sold 50% of his interest in Metropolitan 8, LLC to a third party.

259. On or about June 2010, the Metropolitan 8 Loan was extended for 36 months.

260. At June 30, 2010, the Metropolitan 8 Loan was being offered for sale by the Bank at less than 50 cents-on-the-dollar, yet no corresponding impairment or ALLL adjustment occurred.

261. On or about July 27, 2011, Defendant McKinnon, acknowledging that the collateral was last appraised on April 14, 2008, recommended that Defendant Parrish be granted a 90-day forbearance on the Metropolitan 8 Loan. Defendant McKinnon's recommendation noted the last appraisal date was April 14, 2008.

12. The MPG Flavor Loan and the Boynton-Whitworth Loans (Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott)

262. The MPG Flavor Pict Road Ltd. loan ("MPG Flavor Loan") was initially made on June 28, 2007 by another financial institution, and subsequently acquired by the Bank. Two other banks participated in the loan following its acquisition by the Bank.

263. The MPG Flavor Loan was a two-year-term, interest-only loan for $32,564,903 which had a balloon payment due at maturity. The loan was for the development of a shopping center in Boynton Beach, Florida.

264. A January 2008 loan modification form signed by Defendants Figlewski, Hall, and Pomeroy stated that the Bank made presentations "to approximately 10-12 banks" seeking additional participation interests, but the banks "declined due to economic conditions."

265. On June 29, 2009, the MPG Flavor Loan was in default at maturity with an outstanding balance of $29.1 million.

266. At the July 20, 2009 meeting of the FLC, Defendants Figlewski, Hall, Maddox, and Scott approved a 60-day administrative extension of the MPG Flavor Loan to allow the borrower to "provide a plan for the future."

267. The Bank's internal accounting control systems and the MPG Flavor Loan files falsely indicated that the most recent appraisal at the time of the extension, and the appraisal relied on to support the extension for the MPG Flavor Loan, was the original February 2007 appraisal and that no additional appraisal was obtained until November 2010.

268. Although not documented in the MPG Flavor Loan file, in August 2009, Defendant Pomeroy directed that a new appraisal be ordered on the MPG Flavor property, and an appraisal dated September 10, 2009 was prepared which showed an "As Is" market value of $11.9 million (representing approximately 41% of the loan balance at the time).

269. Defendants Pomeroy and Figlewski received this September 10, 2009 appraisal, but deliberately excluded it from the loan file. Consequently, the FLC meeting minutes for December 21, 2009 stated falsely that an appraisal was "yet to be determined."

270. In September 2009, a Tennessee-based company (referred to herein as "PGMPDC") approached the Bank to obtain a $10 million loan to develop a retail shopping center in Fairview, Tennessee (the "Bowie Commons Loan").

271. Defendant Pomeroy told PGMPDC that it would have to assume the delinquent $29.1 million MPG Flavor Loan as a condition for obtaining the shopping center development loan.

272. Defendant Pomeroy wanted to remove the MPG Flavor Loan from the Bank's inventory because Defendant Pomeroy knew the negative circumstances relating to the credit, including the fact that the developer was in trouble, the loan itself was in default, and the property was headed to foreclosure status.

273. At least three PGMPDC partners met in Florida with Defendants Figlewski and Pomeroy, and, subsequently, in Alabama with Defendants Bailey, Scott, and Pomeroy to discuss the Bank's proposed assumption of the MPG Flavor Loan by PGMPDC as a condition of obtaining the Bowie Commons Loan.

274. During the negotiations, one of PGMPDC's four partners ("the PGMPDC Partner"), in response to PGMPDC's request that its liability for the MPG Flavor Loan be limited, signed an agreement prepared by Defendant Pomeroy that rendered PGMPDC's assumption of the MPG Flavor loan non-recourse, and would have allowed PGMPDC to "put" the loan back to the Bank

after either three or five years, such that PGMPDC could avoid any responsibility to repay the loan.

275. Following entry into the agreement, Defendant Pomeroy told the PGMPDC Partner that the "put" option would be a problem with the regulators so the Bank would be unable to follow through on the agreement.

276. On or about September 23, 2009, Defendant Pomeroy with the approval of Defendants Figlewski, Hall, and Scott, proposed that PGMPDC's assumption of the MPG Flavor Loan be divided into two components, "Note A" and "Note B," each with a principal balance of $16 million.

277. Defendant Pomeroy proposed that Note A be documented as a non-recourse loan and Note B be documented as a recourse loan. These two loans were referred to by the Bank as the "Boynton-Whitworth Loans."

278. Defendant Pomeroy represented to the PGMPDC Partner that although Note B would be documented as recourse, Notes A and B would both be understood by the Bank to be non-recourse, or the Bank would otherwise limit PGMPDC's liability. In order to induce PGMPDC to agree to this side deal, and to address PGMPDC's concerns that the side deal would not be honored by any successor bank if the Bank was acquired, Defendant Pomeroy falsely represented that the Bank was on strong financial footing.

279. In an internal Bank memorandum titled Annual Loan Review of Commercial Real Estate ("CRE") as of November 30, 2009, the MPG Flavor Loan was noted as accounting for nearly half of the non-performing assets ("NPAs") in the CRE Department. This internal memorandum was provided to Defendants Figlewski, Hall, Pomeroy, and McKinnon, among others.

280. The November 30, 2009 memorandum stated, "When the loan with [PGMPDC] closes [and provides for a new borrower assuming the MPG Flavor Loan], it will have the cumulative effect of reducing NPAs by $21.5MM from 13.2% to 6.8%."

281. At the time the MPG Flavor Loan was being assumed by PGMPDC as part of the Boynton-Whitworth Loan, PGMPDC informed Defendant Pomeroy that it could not repay any loans, and that, in fact, without the interest reserve funded by the Bank, PGMPDC would be unable to make any interest payments on the Boynton-Whitworth Loan.

282. PGMPDC ultimately defaulted on the Boynton-Whitworth Loans.

283. As of June 30, 2009, the ALLL for the MPG Flavor Loan should have been increased by no less than $10.1 million. Defendants Maddox, Pomeroy, Figlewski, Hall, and Scott knew the loan was significantly impaired but failed to properly account for it and, instead, improperly extended and renewed it.

284. At March 31, 2010, the ALLL for the combined, outstanding Boynton-Whitworth Loans' balance of approximately $27.7 million should have been increased by no less than $13.4 million.

285. Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott took steps to conceal the impairment of the MPG Flavor Loan and the Boynton-Whitworth Loans by exploiting PGMPDC's need for funding. Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott approved the Boynton-Whitworth Loans at the December 2009 meeting of the FLC, although they knew that PGMPDC as borrower: (a) could not repay the larger loan; and (b) that there was a side deal to treat the Boynton-Whitworth Loans as non-recourse and not an actual liability of PGMPDC.

13. The Lake Ella Developers I, LLC Loan (Defendants McKinnon, Maddox, Pomeroy, Figlewski, Hall, and Scott)

286. On or about November 10, 2005, the Bank's predecessor extended a three-year, interest-only loan for up to $7,678,048 to Lake Ella Developers I, LLC ("Lake Ella Developers"), "a shell company with limited assets," which was guaranteed by Guarantors B and C (the "Lake Ella Loan"). The purpose of the loan was to acquire and develop 68 acres of land into at least 272 single-family lots in Lady Lake, Florida. The proposed subdivision, known as Nine Oaks at Lake Ella, was to be developed in three phases. Defendants McKinnon and Pomeroy

were the Bank's primary loan officers for the Lake Ella Loan during the relevant time period.

287. On or about May 15, 2007, the Lake Ella Loan was modified to allow the commencement of construction to be delayed from May 8, 2006 to August 1, 2007, and to delay the completion of construction from June 10, 2007 to April 1, 2008.

288. On or about February 4, 2008, the Bank sent a Demand Letter to Lake Ella Developers for the payment of January and February 2008 interest by March 11, 2008. The Demand Letter also stated that the Bank's Commitment Letter to Lake Ella Developers had expired.

289. On or about March 4, 2008, Defendant McKinnon stated in a Problem Asset Report that the last known appraisal for the property serving as the collateral for the Lake Ella Loan was dated October 6, 2005 and had an "As Is" appraised value of $5.1 million. McKinnon further noted that "Superior has been informed that the sponsors … do not have the funds to make their interest payments."

290. On March 18, 2008, the outstanding balance on the Lake Ella Loan was $3,997,592.74.

291. On or about March 19, 2008, Defendant Pomeroy informed Defendants Scott, Hall, Figlewski, and McKinnon that: (1) interest payments on

the Lake Ella Loan had not been made for January, February and March 2008; (2) the Bank's proposal to restructure the defaulted loan had been rejected by the borrower, who proposed different restructure terms; (3) the Bank could and should fund the delinquent interest payments to bring the loan current. Defendants Figlewski and Hall agreed that the Bank should fund the delinquent interest payments to bring the loan current.

292. On March 19, 2008, Lake Ella Developers obtained an increase of $69,660.84 to the Lake Ella Loan, bringing the outstanding balance to $4,067,253.58.

293. On or about April 4, 2008, Defendants McKinnon, Pomeroy and Figlewski signed a Credit Approval Request to refinance the Lake Ella Loan and provide funds to develop the related property. The request proposed a maturity date of May 15, 2009 with an option for a 36- month extension, and noted that the last appraisal obtained by the Bank was dated October 6, 2005 and reported a value of $12.5 million. This appraised value represented the "Estimated Prospective Bulk Market Value," rather than the "As Is" Market Value of $5.1 million.

294. On or about May 6, 2008, Lake Ella Developers was notified by Defendant McKinnon that the Bank had approved an increase in the maximum amount of the Lake Ella Loan from $7,678,000 to $8,945,621.

295. On or about June 4, 2008, Lake Ella Developers sent a letter to Defendant McKinnon stating that the refinancing of the Lake Ella Loan might not close because of a dispute between the guarantors. Upon receipt of the letter, Defendant McKinnon understood that the dispute between the guarantors represented a serious problem for the loan.

296. On or about June 6, 2008, Guarantor B sued to have Guarantor C removed as a managing member of Lake Ella Developers I, LLC and certain other entities. On or about June 12, 2008, Defendant McKinnon told Defendants Pomeroy, Scott, and Hall that he had a copy of the lawsuit between the guarantors, and that he planned to send a default notice to Lake Ella Developers. On or about June 13, 2008, Defendant Pomeroy informed Defendants McKinnon, Scott, and Hall that, "…the Loan has not performed as it was originally intended, and we haven't had the full cooperation of the Borrower…"

297. On or about July 21, 2008, Defendants McKinnon and Figlewski signed a Loan Modification Form to extend the maturity of the Lake Ella Loan for 36 months, which referenced the legal dispute between the guarantors.

298. On or about September 5, 2008, Defendants McKinnon and Pomeroy agreed to close on the modification and renewal of the Lake Ella Loan. On or

about September 19, 2008, the Lake Ella Loan was renewed with an outstanding balance of $4,225,951.32.

299. On or about April 9, 2009, Defendant McKinnon authored a Problem Asset Report in which he noted, among other things: (1) the last appraisal for the property serving as collateral for the Lake Ella Loan dated October 6, 2005 reported an appraised value of $12.5 million—representing the Estimated Prospective Bulk Market Value rather than the "As Is" Fair Market Value of $5,100,000; (2) the delays in starting construction; (3) the lawsuit involving the borrowers/guarantors; (4) the project was down to just a single borrower/guarantor; (5) Guarantor B's financial position had gone from $47,033,392 at September 30, 2007 to $757,918 at December 31, 2008; (6) the loan would likely mature on May 15, 2009 as a result of the project's failure to meet the development schedule; and (7) the borrower's financial position had declined materially and he faced an aggregate cash flow shortfall of approximately $1 million.

300. On or about May 5, 2009, Lake Ella Developers emailed Defendant McKinnon stating that he did not have projections for 2009 as requested by Defendant McKinnon because, "Quite honestly, everything is up in the air right now." On or about May 8, 2009, Defendant McKinnon informed Defendants

Pomeroy, Hall, and Figlewski that certain properties of the guarantors had been foreclosed upon by three other banks.

301. On or about May 11, 2009, Defendant McKinnon wrote an email to Defendants Pomeroy, Hall, and Figlewski expressing doubts about the Lake Ella Loan's viability without additional collateral, and noting that the guarantor recently provided a cash flow summary reflecting a negative annual cash flow after debt service of $1,151,722.

302. On or about May 22, 2009, Defendant McKinnon wrote in an email to Defendants Pomeroy, Hall, and Figlewski stating, among other things: "Please take a look at [Guarantor A's] global cash flow. This looks ugly when you consider they have negative cash flow along with several pending foreclosures. I am concerned as to how we can restructure the Lake Ella loan no matter how great the pending plan looks. I will push them for a plan so I can make a recommendation."

303. On or about June 1, 2009, Lake Ella Developers advised Defendant McKinnon by email that Lake Ella Developers' partners no longer had any interest in the Lake Ella project. On or about June 5, 2009, Defendant McKinnon sent a letter to Lake Ella Developers in which he stated, among other things, that the Lake Ella Loan had come due on May 15, 2009 and demanding payment of

$4,840,809.97 because the loan was seriously past due. Defendant McKinnon sent copies of this letter to Defendants Pomeroy, Hall, and Figlewski.

304. On or about June 24, 2009, Defendant McKinnon informed Lake Ella Developers that the maturity date of the Lake Ella Loan was being extended from May 15, 2009 to July 15, 2009.

305. On or about July 9, 2009, in response to an inquiry by the OTS, Defendant McKinnon stated that he considered the Lake Ella project's overall completion percentage to be at 7%, the Lake Ella Loan had gone into default in May 2009, forbearance was granted by Superior until July 2009, and that Lake Ella Developers's original budget was not adequate.

306. On or about July 30, 2009, Defendant McKinnon authored and signed a Risk Rating Change Request form that referenced the "deterioration of the guarantors [sic] financial condition and slow market conditions."

307. On or about August 24, 2009, a representative of Lake Ella Developers informed Defendants McKinnon, Pomeroy, Hall, and Figlewski by email that, at their request, Lake Ella Developers was revising the projections using a "seven year takedown instead of over five years." Defendant McKinnon wrote on a copy of this e-mail that, "Under the 7 year plan & lot takedown the interest carry is short by just over $ 100,000." On or about August 27, 2009, an

employee of Superior emailed a representative of Lake Ella Developers stating that she was waiting on Defendant McKinnon's approval to process a new draw on the Lake Ella Loan.

308. On or about August 28, 2009, Defendant McKinnon authored a Credit Memorandum in which he stated, among other things, that (1) it was originally anticipated that the Lake Ella project would have started within six months of the 2005 closing; (2) the request to renew this loan represented a "Troubled Debt Restructure (TDR) for Superior Bank;" (3) Superior Bank would share in 50% of the cash flow from sales of lots; (4) the absorption rate used in the October 2005 appraisal was aggressive and dated, and that the appraisal status would be discussed by the Credit Committee; and (5) Guarantor B's net worth had plummeted in the last year.

309. On or about August 28, 2009, Defendant McKinnon authored a Credit Approval Request to renew the $4,897,022 outstanding balance of the Lake Ella Loan in order to refinance the land acquisition, and to extend an additional $4,048,599 to develop the approximately 68 acres of land into 273 single family lots. The proposed maturity date was September 10, 2010, with options for four additional 12-month renewals, and the combined loan was to be an interest-only loan with the principal to be due at maturity. Defendant McKinnon again referred

to the October 6, 2005 Estimated Prospective Bulk Market Value of $12.5 million from the stale October 6, 2005 appraisal, and not the "As Is" Fair Market Value. The Credit Approval Request also stated, "Appraisal Status to be discussed at Credit Committee." The Credit Approval Request further noted the significant decline in the Guarantor's net worth. At the time he created this Credit Approval Request, Defendant McKinnon informed Defendants, Pomeroy, Figlewski, and Hall that the loan budget would not be enough to complete the project and that there was a consensus among them that the loan would need to be modified several times before maturity. On or about August 31, 2009, the Florida Loan Committee, with Defendants Hall, Scott, and Maddox present, held a "special" meeting at which they approved the August 28, 2009 Credit Approval Request for the Lake Ella Loan. The minutes of the meeting acknowledged that the last appraisal that the Bank had for the collateral was dated October 6, 2005. On or about September 2, 2009, the Credit Approval Request for this renewal was signed by Defendant Figlewski in his role as Chief Credit Officer and on behalf of the Florida Loan Committee.

310. At September 30, 2009, the ALLL for the Lake Ella Loan should have been increased by no less than $2,405,811. Defendants McKinnon, Maddox, Pomeroy, Figlewski, Hall, and Scott knew that the loan was significantly impaired

but failed to properly account for the loan and, instead, improperly extended and renewed it.

311. On or about October 13, 2009, Defendant McKinnon emailed Lake Ella Developers a proposed forbearance agreement. On or about October 21, 2009, Lake Ella Developers responded in an email, seeking changes to the proposed agreement. Defendant McKinnon forwarded Lake Ella Developers' email to Defendants Hall, Figlewski, Scott, Pomeroy, stating: "This has been the borrower's mode of operation in which they continue to drag the bank along on the project. As we all agree this is getting old." On or about October 28, 2009, the Bank and Lake Ella Developers entered into a forbearance agreement which, among other things, required Lake Ella Developers to obtain a Development Order ("D.O.") by December 31, 2009.

312. The Lake Ella Loan was again renewed in late 2009 and early 2010. The maturity date was extended to January 10, 2011 and included an option to extend the maturity an additional 12 months to January 2012.

313. On or about November 30, 2009, Defendant Figlewski stated to Defendants McKinnon, Hall, and Pomeroy in an email that "no one wants this to continue to drag. The bottom line is that the project is going nowhere without the D.O. and we may default them even if it goes to January."

314. On or about December 14, 2009, Defendants McKinnon, Figlewski, Hall, Pomeroy, and Scott decided to extend the forbearance agreement until January 8, 2010 and to defer the D.O. until 2010. Defendant McKinnon was told by Lake Ella Developers in an e-mail dated December 14, 2009, that although the proposed loan modification, which would include Superior receiving 50% of the profits at end of the Lake Ella project, would be helpful, additional money would be needed for a line of credit, marketing expenses, pre-payment of water and sewer fees, as well as a commitment from the Bank to finance end home buyers.

315. On or about January 13, 2010, Defendant McKinnon told Defendants Hall, Figlewski, and Pomeroy that the Lake Ella Loan was "out of balance" by $975,337, but he recommended closing on the loan anyway and leaving it "out of balance."

316. On or about August 13, 2010, Superior received an appraisal dated July 29, 2010 which valued the property serving as the collateral for the Lake Ella Loan at $1,640,000. The Florida Loan Committee decided to continue development of the Lake Ella project even though the appraisal had determined that any value would come from a bulk sale of land in that further value was not realizable by converting the land into lots. Defendant Figlewski wrote a memorandum to Defendant Scott dismissing this determination by the appraiser.

317. On December 31, 2010, the Lake Ella Loan had an outstanding balance of $7,246,289.52.

318. On or about July 8, 2011, the Bank received a recent appraisal valued the still-vacant land serving as the collateral for the Lake Ella Loan at $930,000. On or about January 20, 2012, the Bank received an updated appraisal valuing the collateral at $770,000.

319. As of April 1, 2013, the Lake Ella Loan had still not been repaid.

14. <u>The Washington Street Developers, LLC Loan (Defendants Maddox, Figlewski, Pomeroy, Hall, and Scott)</u>

320. In May 2005, a loan of approximately $4.8 million was made to Cordoba Washington Street, LLC ("Cordoba") to develop a 34-acre site into 190 town home sites in Port Richey, Florida. More than 50% of the property consisted of wetlands/environmentally sensitive land.

321. By January 31, 2008, Cordoba, which was experiencing cash flow problems, was unable to deliver developed lots, known as "pads," to a potential purchaser that was a home builder. The home builder backed out of the deal due to ongoing issues with the project and changes in the real estate market.

322. Defendant Pomeroy and a Bank employee who reported to him met with a Bank customer who was in the construction business ("Borrower D") to discuss with Borrower D their proposal that he be substituted for Cordoba on the

loan for the development of the town home sites. Defendant Pomeroy told Borrower D that the Bank intended to foreclose on the property, and wanted Borrower D to assume the $5 million loan (the "Washington Street Developers Loan").

323. Borrower D had reservations about taking over the loan because of the state of the construction business. To induce him to do so, Defendant Pomeroy told him the loan had a one-year interest reserve, that it would be non-recourse to Borrower D, and that the Bank would grant Borrower D an additional $13 million construction loan, for a total of $18 million in loans.

324. In or around December 2008, certain Superior employees caused an entity which they named "Washington Street Developers, LLC" to become incorporated for the purpose of taking over the Washington Street Developers Loan from Cordoba. Around this time, the Bank renamed the Cordoba loan in its books, records, and accounts. The new name became the "Washington Street Developers, LLC" loan. The Bank planned to grant the non-recourse Washington Street Developers Loan to Borrower D with no guarantors on the loan.

325. Borrower D visited the town home site and observed that the pads at the property were not complete.

326. At the FLC meeting that took place on or about September 15, 2009, Defendants Figlewski, Maddox, Scott, Pomeroy and Hall approved modifying and extending the loan for the development of the town home sites to Cordoba despite their knowledge of the facts demonstrating that Cordoba could not repay the loan. At the time of this meeting, the most recent appraisal available to the Bank of the property serving as the collateral for the loan was dated July 1, 2004 and valued the property at $3,670,000.

327. On March 24, 2010, Defendant Figlewski requested a 120-day administrative extension on the loan, notwithstanding the Bank's internal loan policy which stated that a loan could only have a one-time 90-day administrative extension.

328. On or about July 13, 2010, the Bank took ownership of the underlying property through foreclosure. Following the foreclosure, however, Borrower D did not receive title to the property and did not assume the loan.

329. As of September 30, 2009, the ALLL for the Washington Street Developers Loan should have been increased by no less than $2,357,997. Defendants Maddox, Figlewski, Pomeroy, Hall and Scott knew that the loan was significantly impaired but failed to see that the loan received the proper accounting treatment.

15. **<u>The SDI Development, LLC Loan (Defendants Maddox, Figlewski, Hall, and Scott)</u>**

330. On or about August 23, 2007, the Bank extended a loan of approximately $2,896,411 to SDI Development, LLC (the "SDI Loan"), a Borrower B entity, in order to refinance a loan originated at another financial institution. The original maturity of the SDI Loan was August 23, 2009.

331. The underlying collateral on the SDI Loan was approximately 2.97 acres of vacant property in Mexico Beach, Florida to be developed into condominiums. The property had originally been purchased on or about May 2004 by a Borrower B entity.

332. The SDI Loan was renewed multiple times through December 2010 because Borrower B was unable to repay the loan because he could not finance construction of the condominiums or sell the property.

333. On September 22, 2009, the loan again matured, with an outstanding balance of approximately $2.8 million. Although they knew that the most recent appraisal was dated August 15, 2007, that the loan had no guarantors, that the asking price for the property had decreased by nearly $2 million, and that the loan-to-value ratio ("LTV") exceeded applicable Bank guidelines, Defendants Figlewski, Hall, Maddox, and Scott unanimously approved the renewal of the SDI Loan for two years at the October 26, 2009 meeting of the FLC.

334. As of September 30, 2009, the ALLL for the SDI Loan should have been increased by no less than $1,339,719. Defendants Maddox, Figlewski, Hall, and Scott knew that the loan was significantly impaired but failed to see that the loan received the proper accounting treatment.

16. The Beach Club at Mexico Beach, LLC Loan (Defendants McKinnon, Maddox, Pomeroy, Figlewski, Hall, and Scott)

335. On or about August 2004, Superior's predecessor extended a loan of approximately $14,126,334 to The Beach Club at Mexico Beach, LLC ("The Beach Club at Mexico Beach Loan"), a Borrower B entity, to build condominiums in Mexico Beach, Florida. The original maturity of The Beach Club at Mexico Beach Loan was 18 months with a possible six-month extension. The Bank received an appraisal on the underlying property dated January 9, 2004 of $3.12 million.

336. The Beach Club at Mexico Beach Loan was renewed multiple times because Borrower B had been unable to repay the loan because, among other reasons, the property had not been completed on time in 2005, the contractor had filed for bankruptcy, and all condominium pre-sales had been cancelled by the purchasers.

337. In a May 15, 2009 internal Bank memorandum, Defendant McKinnon noted that Borrower B had informed the Bank that condominium sales had been

non-existent in the past year. Notwithstanding this fact, Defendants Figlewski and McKinnon approved a loan renewal on June 15, 2009. Defendants Figlewski, Hall, Maddox, Pomeroy, and Scott—all of whom knew that the most recent appraisal on file, dated January 9, 2004, reported an "As Is" market value of $3.12 million—approved and renewed the loan during the June 22, 2009 meeting of the Florida Loan Committee.

338. At June 30, 2009, The Beach Club at Mexico Beach Loan had an outstanding balance of $9,742,271.

339. As of June 30, 2009, the ALLL for The Beach Club at Mexico Beach Loan should have been increased by no less than $4,804,645. Defendants McKinnon, Maddox, Pomeroy, Figlewski, Hall, and Scott knew that the loan was significantly impaired but failed to see that the loan received the proper accounting treatment.

340. On or about June 23, 2010, a draft appraisal of the remaining unsold 34 units for $3,600,000 was provided to the Bank. At the time, the appraiser had been engaged to perform eight appraisals for the Bank.

341. On June 25, 2010, the appraiser sent an email to Defendants McKinnon and Figlewski regarding the property that was the collateral for The Beach Club at Mexico Beach Loan. The appraiser noted: "the rental program will

not provide a sufficient return in the long run to justify a long term rental operation. Sales of condominiums have stalled in this (just like every market)…" The appraiser further commented on "the clear lack of a typical sustainable rental market in the area," and pointed out that "more and more bank sales of condo units at largely discounted prices will continue to cannibalize the long term renters in the market." Finally, the appraiser noted: "In addition, the reported 4 unit building 'on the sand' was never construction [sic]…"

342. On August 7, 2010, Defendant Hall sent an email to the appraiser, with a copy to Defendant Figlewski, stating that they were "gravely disappointed" in the appraisal, noting their disagreement with the appraiser's assumptions, and informing the appraiser that "we will be refuting all of your appraisals vigorously if they stand."

343. On or about August 10, 2010, the appraiser provided a final appraisal to the Bank with the effective date of June 23, 2010 for $4,525,000 for the property serving as the collateral for The Beach Club of Mexico Beach Loan, nearly $1 million more than the value indicated in the draft appraisal.

17. The AIG Baker Partnership Loans (Defendants McKinnon, Pomeroy, Figlewski, Hall, and Bailey)

344. On or about September 2004, the Bank's predecessor purchased a loan of approximately $15 million to an American International Group, Inc. ("AIG")

entity, representing the predecessor bank's participation in a $31,450,000 loan originated by another financial institution (the "AIG Lead Bank").

345. On or about June 2005, the original $31,450,000 loan was replaced with two loans totaling $43,453,900, which were extended by the AIG Lead Bank (the "AIG Loans"). The AIG Loans were made to AIG Baker Orange Beach Marina, LLC and to AIG Baker Orange Beach Wharf, LLC.

346. AIG Global Real Estate, a wholly-owned subsidiary of AIG, was a partner to AIG Baker Orange Beach Marina, LLC and to AIG Baker Orange Beach Wharf, LLC.

347. The Bank purchased a $14,227,000 participation of the AIG Loans from the AIG Lead Bank, replacing its original $15 million participation. The AIG Loans were extended in order to finance the development of a slip marina, restaurant, store, amphitheater, and land located in Orange Beach, Alabama. AIG was providing financial support to these projects.

348. The AIG Loans were extended multiple times subsequent to its origination by the AIG Lead Bank.

349. On or about September 5, 2008, McKinnon was informed by the AIG Lead Bank that it downgraded the AIG Loans for numerous reasons including the lack of sales, slow leasing, and the negative news regarding AIG. McKinnon

noted in an internal document, “It appears to me that you stay with the project so loan [sic] as AIG continues to fund the project and bring value to the project. If they stop supporting the project you will know quickly because their lack of funding will ultimately result in a payment default.”

350. On or about September 16, 2008, AIG faced a liquidity crisis and received a bailout by the U.S. Government. Internal Bank documents dated October 28, 2008 which were reviewed and signed by Defendants McKinnon, Figlewski, and Scott stated, “It has been well publicized that the Federal Government has indirectly ‘taken over’ AIG in a financial bailout of the company.” The Bank documents further stated: (a) “At this time future pay downs from the development of additional phases within the … project are not likely until current market conditions improve.” The Bank documents acknowledged that it “…appears the [debtor] does not have sufficient cash flow to carry the subject projects without assistance from AIG Global and or American International Group, Inc. (AIG).”

351. On January 10, 2009, the AIG Loans were again in default.

352. On January 30, 2009, a telephone conference call was held between the debtors and their lenders. Defendants McKinnon, Pomerory, Figlewski, Hall, and Bailey participated in the call. The debtors requested that their lenders write down

their debts by $300 million, or approximately 50%. The Bank's representatives told the AIG Lead Bank that it was not willing to write down any of the AIG Loans.

353. On or about February 21, 2009, the Bank received a document from the AIG Lead Bank which showed that repayment on the AIG Loans had stopped on February 1, 2009.

354. On March 13, 2009, Defendant McKinnon informed Defendants Pomeroy, Figlewski, and Hall by email that stated the AIG asset manager appointed by the U.S. Department of the Treasury "…confirmed…there is '0 chance' AIG will downstream any money to the AIG Baker projects." Defendant McKinnon further stated that the asset manager "considered bankruptcy a viable option for the project…" Attached to Defendant McKinnon's email was a document provided by the AIG Lead Bank which showed that the debtors had stopped repaying their AIG Loans on February 1, 2009.

355. An April 10, 2009 Problem Asset Report created and signed by Defendant McKinnon stated, "The loan has matured and the borrower has stated that he does not have adequate cash flow to service the debt. The borrower also stated that its partner AIG Global (AIG) has stated that it will provide no future funding to the project to cover operating shortfall and interest carry."

356. On April 24, 2009, Defendant McKinnon sent a letter to the AIG Lead Bank, and sent copies to Defendants Hall and Bailey, stating, “The loans matured on January 10, 2009 and a demand letter was issued on February 24, 2009. However, no plan of action for the handling of these credits has been completed or implemented.”

357. On May 7, 2009, Defendants McKinnon and Hall sent a letter to the AIG Lead Bank stating, “AIG previously indicated that it has no liquidity to allow it to make any payments related to the Loans…”

358. On May 11, 2009, Defendant McKinnon sent a letter to the AIG Lead Bank, copying Defendant Hall, noting that the AIG Lead Bank had excluded the AIG Loans from the AIG Lead Bank’s plan to seek recovery from its total loan exposure to AIG when the AIG Loans “matured over 4 months ago.”

359. The AIG Lead Bank responded the same day in a letter to Defendants McKinnon, Hall and Bailey stating: (a) “…collateral presents operational issues from a lender’s perspective. Further, the collateral presents numerous other issues, including environmental and developmental considerations, which we have previously discussed with Superior on multiple occasions.” “…perhaps bankruptcy by the borrowers and guarantor cannot be avoided…”; (b) “…we have informed you that we are awaiting the results of the updated appraisals”; and (c)

"[The AIG Lead Bank] will not compromise its position on other loan transactions to a different borrower involving a different commercial project simply because Superior seeks additional security that it did not bargain for when it chose to participate in the [AIG Loans]."

360. As of March 31, 2009, the AIG Lead Bank's ALLLs for its share of the AIG Loans were, percentage-wise, significantly greater than that recorded by Superior in the ALLLs for its share of the AIG Loans.

361. As of March 31, 2009, the ALLL for the AIG Loans should have been increased by no less than $7,078,128. Defendants McKinnon, Pomeroy, Figlewski, Hall, and Bailey each knew that the AIG Loans were significantly impaired but failed to take any steps to account properly for the loans.

362. At June 30, 2010, the Bank's participation in the AIG Loans was being actively marketed for sale by the Bank at less than 50 cents-on-the-dollar, yet no corresponding impairment or ALLL adjustment occurred.

363. On September 13, 2010, the property serving as the collateral for all of the AIG Loans was sold by the Lead Bank for $18.2 million in an auction sale.

18. The Renaissance Audubon Woods Loan (Defendants McKinnon, Scott, and Bailey)

364. On or about February 10, 2005, the Bank's predecessor purchased a loan of approximately $7 million to Renaissance Audubon Woods II, LLC (the

"Renaissance Audubon Loan"). The $7 million purchase represented a participation loan by the Bank's predecessor in a $26,607,000 loan originated by another financial institution (the "Renaissance Audubon Lead Bank") on or about December 27, 2004. The loan originally had a 36-month term.

365. The Renaissance Audubon Loan was extended for the purpose of constructing two 40-unit luxury condominium projects in Louisville, Kentucky.

366. The Renaissance Audubon Loan was extended multiple times subsequent to its origination by the Renaissance Audubon Lead Bank.

367. In an April 24, 2008 memorandum authored by Defendant McKinnon and sent to Defendants Scott and Bailey, Defendant McKinnon stated: (a) "The project has had excessive and substantial cost overruns and construction delays"; (b) the second tower was never started; (c) "The cost overruns and construction delays have caused a staggering $15,000,000 loan increase (90% increase) for Phase 1 and the amenities"; (d) "In addition, it now appears that the borrower will still be approximately $1,000,000 short in funds required to complete the project"; (e) the interest reserve had been depleted; (f) "The guarantor appears to have no additional cash flow or collateral to offer"; and (g) "If a plan to renew the loan can not be achieved, it is likely that the borrower and guarantor will file bankruptcy."

368. On or about January 10, 2009, Defendant McKinnon created a Problem Asset Report that stated: (a) the current maturity date for the Renaissance Audubon Loan was April 1, 2009; (b) the latest appraisal date was February 28, 2007; (c) the project had "significant cost over runs and construction delays"; (d) the last financial statement received from the Guarantors was dated December 1, 2007; and (e) "As of 1/10/09 [the Renaissance Audubon Lead Bank] has not provided an acceptable action plan for Superior Bank."

369. As of January 10, 2009, the latest appraisal that the Bank had relating to the Renaissance Audubon Loan was dated December 6, 2004.

370. On April 1, 2009, the Renaissance Audubon Loan was in default.

371. On April 6, 2009, the Bank filed a Complaint against the Renaissance Audubon Lead Bank in the Circuit Court of Jefferson County, Alabama for its alleged "complete failure to properly service, administer and enforce" the loan, in which the Bank described problems with the Renaissance Audubon Loan. The Bank's attorney sent a copy of the Complaint to Defendants McKinnon, Scott, and Bailey. The Complaint stated, among other things, that "When the threat of default on the Loan appeared imminent" Bailey wrote to the CEO of the Renaissance Audubon Lead Bank, who was also the Chairman of the Renaissance Audubon

Lead Bank "seeking direct involvement in dealing with the serious problems on the Loan."

372. As of March 31, 2009, the ALLL for the Renaissance Audubon Loan should have been increased by no less than $3,815,132. Defendants McKinnon, Scott, and Bailey knew that the loan was significantly impaired but took no steps to properly account for the loan.

373. At June 30, 2010, the Renaissance Audubon Loan was being actively marketed for sale by the Bank at less than 50 cents-on-the-dollar, yet no corresponding impairment or ALLL adjustment occurred.

19. The Taipan Property II, LLC Loans (Defendants Maddox, Pomeroy, Figlewski, Hall and Scott)

374. On or about June 14, 2006, Taipan Property II, LLC ("Taipan") received a term loan from a financial institution other than the Bank. Guarantor A controlled Taipan. The purpose of this loan was to fund the construction of 12 buildings in Tampa, Florida which would have 81 townhomes. Subsequently, Guarantor A changed the object of the project to student housing rentals. Due to changes in the market and the nature of the project, the original lender stopped funding the project approximately halfway to completion.

375. Guarantor A found another financial institution to extend two construction loans to fund the project. This new financial institution became

unable to continue financing the project and asked the Bank to take over its two loans. At the time, a feasibility study obtained by the Bank stated, "enrollment at [a local university whose students were being targeted for the student housing] expected to decrease by 1,000 students in the next few years."

376. On or about January 8, 2009, the Bank extended two loans totaling $15,325,000 to Taipan Property II, LLC (the "Taipan Loans") to refinance Guarantor A's outstanding debt on the student housing project and to complete construction. At this time, Guarantor A had only provided tax returns from 2006, and a personal financial statement dated July 12, 2008. Guarantor A's financial information showed negative net income for 2008 of approximately $2.3 million, negative tangible net worth for 2007 and 2008, negative cash available for debt service for 2008; and a negative business loss and retained earnings for 2008.

377. The terms of the Taipan Loans were 60 months which violated the Bank's internal policies of limiting construction loans to a term of 18 months and limiting the maximum balloon or term period to 3 years past the construction period.

378. As of January 2010, the property was merely a shell of a building with weathered studs which needed to be torn down.

379. At the January 19, 2010 meeting of the FLC, Defendants Maddox, Pomeroy, Figlewski, and Hall unanimously approved and modified the Taipan Loans including extending the construction phase by 90 days to "allow for all of the 12 buildings to be finished and leased up by April 14th, 2010."

380. On May 5, 2010, Defendant Figlewski informed Defendant Pomeroy by email that there were problems with the loans, that Guarantor A was past due on one of the loans, that they needed to determine the amount of delinquent taxes on the project, and that Guarantor A had lost several properties through foreclosure. The email also stated, "[Guarantor A] is becoming boxed in a corner by the rental shortfalls and no ability to correct."

381. By May 7, 2010, Defendant Figlewski told a subordinate employee that he was concerned that Guarantor A "was in a world of trouble."

382. A May 19, 2010 internal bank document, signed by Defendants Pomeroy and Figlewski, noted that there were parking issues at the project due to students not having sufficient parking and as a result, students were vacating for the summer without paying their rent, causing a decline in cash flow. The document also noted that construction of three remaining buildings had not been completed.

383. Also on May 19, 2010, Defendant Figlewski sent an email to Defendants Hall, Pomeroy, Scott, and Maddox which stated: (a) that the Bank was working on a longer term renewal package that would (hopefully) allow the loan to be sold to a third party; and (b) that it appeared "that a parking issue and poor management of the rental aspects over the Spring caused rental income to decline." Defendant Figlewski further stated in the email, "We can convene a Special FLC to discuss, but I wanted to avoid discussion with the entire Florida Lending Team at this juncture." Attached to the email were proposed modifications to the Taipan Loans.

384. At the May 20, 2010 meeting of the FLC, Defendants Maddox, Pomeroy, Figlewski, Hall, and Scott unanimously approved the modifications to the Taipan Loans including changing the required monthly interest payments to be made from an interest reserve on a quarterly basis. At this time, the latest appraisal on the property was dated May 9, 2008 and was based on the assumption that the project would consist of student housing.

385. On June 10, 2010, the maturity dates for the Taipan Loans were extended to September 30, 2010, but the loans were not repaid on September 30, 2010.

386. As of June 30, 2010, the ALLL for the Taipan Loans should have been increased by no less than $5,244,205. Defendants Maddox, Pomeroy, Figlewski, Hall, and Scott knew the loans were impaired significantly but failed to properly account for them.

387. On or about August 17, 2010, the Bank issued a "Notice of Intent to Cease Disbursement of Construction Loan Advance" and a notice of default as a result of Taipan failing to make an August 15, 2010 interest payment, and for failing to pay 2008 and 2009 property taxes. On August 26, 2010, the Bank initiated foreclosure on the loan collateral. On September 16, 2010, a Receiver was appointed. Subsequently, Guarantor A filed for bankruptcy.

388. The purpose of the project for which the Taipan Loans were obtained subsequently changed to apartments not specifically marketed to students, and then to housing pursuant to Section 8 of the Housing Act of 1937 (a/k/a "Section 8 housing").

20. <u>The Mainsail Conference Center, LLC Loans (Defendants Pomeroy, Figlewski, Hall, and Scott)</u>

389. The Mainsail Suites Hotel, located in Tampa, Florida, was built in 1999 as the lodging component of a private training facility for an international consulting practice (the "International Consulting Practice"). On January 1, 2000 the International Consulting Practice entered into a 10-year lease. In 2004, another

company (the "Successor Company") purchased the International Consulting Practice. The Successor Company negotiated a discounted pay-off over the remaining term of the 10-year lease (through December 2010) and agreed not to use the facility so that the property could be converted into an extended stay hotel.

390. In December 2006, Mainsail George Road, LLC, a wholly-owned subsidiary of Mainsail Management Group, Inc., purchased the land next to the hotel for $2,195,000. The plan was to build a conference center and corporate offices which would then be leased and occupied by the Mainsail Suites Hotel. Following the land purchase, the hotel sector of the economy was negatively affected by the general economic downturn.

391. On or about August 5, 2008, the Bank extended a construction loan with a 24-month term (which could be increased for up to a total of 90 months) for $8,053,000 and a term loan for up to $400,000 with a 5-year term, to Mainsail Conference Center, LLC (the "Mainsail Loans"). The purpose of the Mainsail Loans was to build and furnish the conference center and corporate offices site.

392. The Mainsail Loans violated the Bank's internal policies of: (a) limiting construction loans to a term of 18 months; (b) limiting the maximum balloon or term period to 3 years past the construction period; (c) failing to obtain audited financial statements from the borrower; (d) failing to have the Mainsail

Loans jointly and severally guaranteed by all owners and partners; (e) failing to have required cash flow information; and (f) having an excessive loan-to-cost ratio.

393. On March 10, 2010, Defendant Pomeroy, acting as the loan officer, prepared an analysis which indicated that the loan was impaired by approximately 50%. Defendant Pomeroy noted in his analysis that Defendants Figlewski, Hall, Scott, and Bailey had recently visited the properties. The renewal of the Mainsail Loans was approved by unknown individuals on or about March 18, 2010 without any supporting documentation or approval by the FLC, despite Defendant Pomeroy's analysis indicating that the loan was impaired by approximately 50%.

394. On April 21, 2010, Defendants Figlewski, Hall, Scott, and Bailey attended a BLIC meeting where Defendant Scott reviewed the renewal of the Mainsail Loans. The latest appraisal available to the Bank for the Mainsail Loans was dated June 16, 2008 and had an "As Is" Market Value of $2,200,000.

395. As of March 31, 2010, the ALLL for the Mainsail Loans should have been increased by no less than $4,099,719. Defendants Pomeroy, Figlewski, Hall, and Scott knew the loan was significantly impaired but took no steps to ensure that the loan was properly accounted for.

396. The Mainsail Loans were renewed on or about August 5, 2010, when Defendant Pomeroy was still acting as the loan officer. On August 26, 2010,

Mainsail Conference Center, LLC sent a letter to Defendant Hall stating that it had requested Defendant Pomeroy to arrange a meeting to discuss the Mainsail Loans, and to include Defendant Hall in the meeting.

397. On September 15, 2010, Mainsail Conference Center, LLC sent an email to Defendant Pomeroy confirming a recent conversation to move "…forward with the plans as we discussed to cure the Mainsail Hotel and Conference Center assets." The email further stated: "The conference center payments are due today and we do not have the cash to make the payments. As a matter of fact we have used the last portion of our credit line to ensure that we could cover payroll and some other deferred food service vendors."

398. On November 29, 2010, the Bank issued a Notice of Default because the borrower missed its September 15, 2010 and subsequent payments. On December 10, 2010, an internal Bank memo was provided to Defendant Pomeroy, stating: "The Principals have explained that the hospitality industry has been hard hit by the economic recession." The memo further stated: "…extended stay products like the Principals are not seeing the demand and occupancy needed to achieve profitability…" and "…Principals have utilized all of their personal and corporate cash reserves to keep the loan on the *hotel* current until recent months."

399. On April 13, 2011, the larger of the Mainsail Loans was sold to a third party for approximately 28% of its value, and the smaller of the Mainsail Loans was sold to a third party for approximately 18% of its value.

21. The Character Counts, LLC Loans (Defendants McKinnon, Maddox, Pomeroy, Figlewski, and Scott)

400. On or about September 30, 2005, the Bank's predecessor extended two loans totaling approximately $6 million to Wolf Pup, LLC ("Wolf Pup") to fund the construction of a 62-unit condominium project at Wolf Bay in Foley, Alabama (the "Wolf Pup Loans"). Wolf Pup's partners and guarantors included four individuals including the general contractor on the project. The Bank received reports of appraisals of the underlying property on or about October 3, 2005 and on or about December 9, 2005, which reported values of $6.3 million and $2.5 million, respectively.

401. On or about October 5, 2007, the Wolf Pup Loans, which had increased to approximately $17.5 million and were in default, were assumed by and/or sold to Character Counts, LLC (the "Character Counts Loans"). Character Counts, LLC was comprised of Borrower E (75% ownership) and a Wolf Pup partner/guarantor/general contractor (25% ownership), both of whom became guarantors on the Character Counts Loans. None of the Wolf Pup guarantors, who were in litigation against one another, were released from being guarantors. Also,

by October 5, 2007, all pre-sales made by Wolf Pup were lost because promised boat slips had not been completed and because the condominium association was not valid under Alabama law, among other reasons.

402. On or about November 2007, one condominium was sold to Borrower E, and one condominium was sold to the Wolf Pup partner/guarantor/general contractor. No other condominiums had been sold.

403. On or about October 10, 2008, Defendant McKinnon prepared a recommendation to renew the Character Counts Loans. Defendants McKinnon, Figlewski, and Hall signed this recommendation which noted "N/A" in place of an appraisal date and appraised value. In fact, the Bank possessed reports of appraisals of the underlying property which it received on or about October 3, 2005 and on or about December 9, 2005, reporting values of $6.3 million and $2.5 million, respectively. Defendant McKinnon, among others at the Bank, received copies of these appraisal reports.

404. In or around November 2008, the Character Counts Loans went into default. In or around December 2008, the Character Counts Loans were renewed.

405. On or about September 22, 2009, the Character Counts Loans matured and again went into default. Demand letters were sent to Character Counts and to all guarantors.

406. As of September 30, 2009, the ALLL for the Character Counts Loan should have been increased by no less than $7,864,474. Defendants McKinnon, Maddox, Pomeroy, Figlewski, and Scott knew that the loans were significantly impaired but failed to see that the loans were properly accounted for.

407. On or about October 6, 2009, Defendant McKinnon prepared a Credit Approval Report for a renewal of the Character Counts Loans in the amount of $15,984,704. Defendants McKinnon, Pomeroy, Figlewski, and Scott signed this report which noted that the last appraisal received was dated December 2005, and that Defendant McKinnon informed Borrower E that he needed to develop a repayment plan that included a reduction of principal over the following 12 months. The appraised value of the underlying property at December 2005 was $2.5 million.

408. At the FLC meeting held on or about October 13, 2009, despite having been informed that the latest appraisal was from December 2005, the lack of adequate collateral, was an interest-only loan, and was to mature in approximately two months, Defendants Maddox, Pomeroy, and Figlewski approved the renewal of the Character Counts Loans for $15,984,704.

409. On or about October 30, 2009, the Bank, Character Counts, LLC, Wolf Pup, LLC, and the five guarantors of these two LLCs, entered into a forbearance agreement for approximately two months.

410. On or about January 22, 2010, Defendant McKinnon prepared a Credit Approval Request for a 90-day administrative renewal. Defendants McKinnon, Figlewski, and Scott signed this request which noted that the last appraisal received was dated December 1, 2005. This Credit Approval Request was presented at the FLC meeting held on or about January 25, 2010.

411. On or about June 24, 2010, the Bank and Character Counts, LLC entered into an administrative renewal and forbearance agreement for approximately two months.

412. On or about June 23, 2010, a draft appraisal valuing the remaining 60 units of the condominium project at $5,775,000 was provided to the Bank. At the time, the appraiser had been engaged to perform eight appraisals for the Bank.

413. On June 25, 2010, the appraiser sent an email to Defendants McKinnon, and Figlewski which stated, in pertinent part, in regard to the property securing the Character Count Loans: (a) “No units closed as the market died. The market is still dead”; (b) “The location, although on the water…is way out of the way”; and (c) “Again, there is no sustainable rental market for these units and the

goal would be to hang on until the condo market returns. Granted, prices will not be at the pre construction prices (substantially lower actually)…"

414. On August 7, 2010, Defendant Hall sent an email to the appraiser, with a copy to Defendant Figlewski, which stated that: (a) "We are gravely disappointed in the results"; and (b) "We disagree with the assumptions used and will be refuting all of your appraisals vigorously if they stand." On or about August 10, 2010, the appraiser provided a new "final" appraisal, with an effective date of June 23, 2010, for $6,990,000.

415. On or about December 2, 2010, Defendants McKinnon, Figlewski, and Scott recommended that Borrower E, a guarantor on the Character Counts Loans, be granted two new five-year personal loans totaling approximately $16 million, which would be used to pay off the Character Counts Loans ("Borrower E's Personal Loans"). The recommendation was provided to the FLC, including Defendants Maddox, Pomeroy, Figlewski, Hall, and Scott, which approved Borrower E's Personal Loans. Borrower E obtained these two personal loans on or about December 23, 2010.

416. On or about December 31, 2010, the entire balance of the smaller (approximately $5,346,575) of Borrower E's Personal Loans was completely charged-off by the Bank.

417. By November 25, 2013, the appraised value of the condominium property securing Borrower E's Personal Loans was $2,530,000.

22. The JC Loans (Defendants McKinnon, Maddox, Pomeroy, Figlewski, Hall, and Scott)

418. From on or about July 22, 2004 through June 15, 2006, the Bank's predecessor extended four loans totaling up to approximately $5,457,500 to Borrower JC and one of his entities to fund the conversion of an existing office buildings into condominiums and to acquire four vacant parcels of land in the Sarasota, Florida, area (the "JC Loans").

419. The largest of the JC Loans involved five, one-story office buildings in Sarasota, Florida, for which the property was originally purchased in 2006. This interest-only loan was granted on or about June 15, 2006 for a term of one year, and it was extended several times between 2007 and 2011 because the borrower was unable to repay the loan.

420. An internal Bank document related to the largest of the JC Loans dated June 12, 2007, stated, "[the borrower] feels that he should be able to quickly sell the property for the loan amount…"

421. On September 15, 2008, the largest of the JC Loans, with an outstanding balance of $3,140,000, became due. Defendants Maddox and Figlewski knew that the borrower was unable to repay the loan. On or about

October 31, 2008, Defendants Maddox and Figlewski sought to renew the loan in order to avoid recognizing the losses. In an internal Bank memorandum dated October 31, 2008, a loan officer acknowledged "this is a short term renewal to get this loan off of the past dues for month end. Once it is renewed – the Additional Advance will be completed with documentation. George Hall & John Figlewski are aware of this & have given their approval so that this can get off past dues." Another internal Bank memorandum stated that the loan was being renewed for 12 months so that the borrower could pay down the principal by $1 million. No such pay down occurred during the following 12 months.

422. On December 28, 2009, Defendants Maddox and Figlewski again extended the largest of the JC Loans, which had grown to $3,310,000, for 90 days because the borrower was still unable to repay. At the time of this extension, the last appraisal, which was dated April 6, 2006, was based on an office building project, not condominiums.

423. The three smaller loans comprising the JC Loans were used to acquire vacant properties on approximately July 22, 2004, June 13, 2005, and October 11, 2005, respectively, on which the borrower never built. These loans had original maturities of one year, but, because the borrower could not repay the loans, the maturity dates were extended multiple times through 2011.

424. On or about September 14, 2009, at an FLC meeting, Defendants Maddox, Pomeroy, Figlewski, Hall, and Scott approved the renewal of two JC Loans for $862,500 each and one loan for $357,229. These Defendants knew at the time that: (1) the collateral for these loans had not been appraised since 2005; (2) the loan-to-value ratio for the two loans for $862,500 exceeded the maximum allowed by Bank policy; (3) the local real estate market was not stable; and (4) the borrower had significant cash flow problems because of difficulties in leasing and selling both his developed and undeveloped properties.

425. As of September 30, 2009, the ALLL for three smallest of the JC Loans (i.e., the vacant properties) should have been increased by no less than $722,700. Defendants Maddox, Pomeroy, Figlewski, Hall, and Scott knew that the loans were impaired significantly but failed to act so that the loans would be accounted for properly.

426. As of December 31, 2009, the ALLL for the largest of the JC Loans (i.e., the office buildings) should have been increased by no less than $1,626,829. Defendants Maddox and Figlewski knew that the loans were impaired significantly but failed to act so that the loans would be accounted for properly.

427. At June 30, 2010, all of the JC Loans were being actively marketed for sale by the Bank at less than 50 cents-on-the-dollar, yet no corresponding impairment or ALLL adjustment occurred.

23. The Joint Ventures (Defendants Caughran, Figlewski, Hall, Maddox, Pomeroy, and Scott)

428. Between December 2003 and October 2004, a predecessor of the Bank entered into $4.36 million worth of commercial loans with North Florida-based real estate developer Borrower F for the purpose of developing residential beach front and ancillary commercial projects near Cape San Blas, Florida (the "Borrower E Loans").

429. By February 2007, the Borrower F Loans were in default and Borrower E's TCE to the Bank was approximately $9 million.

430. The Bank's files for the Borrower F Loans show that as of February 2007, Borrower F had inadequate capital to cover principal or interest payments for the Borrower F Loans. On February 28, 2007, however, Defendant Scott renewed and extended the Borrower F Loans, making interest due quarterly and balloon principal payments due February 28, 2008.

431. As of December 2007, the Borrower F Loans remained in default, with Borrower F unable to make any of the required payments.

432. On December 21, 2007, the Bank entered into four separate loan modification and reinstatement agreements for the Borrower F Loans (the "Borrower F Modifications").

433. The Borrower F Modifications stated that Borrower F had entered into a series of joint venture transactions with Durden Enterprises, whose sole member and manager was Superior Director Durden (the "Borrower F Joint Ventures"). These related-party transactions were neither consummated at arm's-length nor in the ordinary course of business.

434. The Borrower F Joint Ventures provided that Durden Enterprises would pay to the Bank a pre-determined amount to bring current the interest payments for each of the Borrower F Loans and make an allocated amount of tax and insurance payments related to the underlying real properties during the term of the Borrower F Loans. In exchange, Durden Enterprises received operational and managerial control of the underlying property development and an 80% ownership interest in the completed projects.

435. The Borrower F Joint Ventures provided that beyond the interest payments for the Borrower F Loans and an allocable share of taxes and insurance, Durden Enterprises had no further obligation to contribute capital and had no

further liability in regard to the Borrower F Loans. Each of the Borrower F Loans remained solely the obligation of Borrower F.

436. Simultaneously with the entry into the Borrower F Joint Ventures, Borrower F, the Bank, and Durden Enterprises entered into a corresponding series of subordination agreements for each of the Borrower F Loans (the "Borrower F Subordination Agreements").

437. The Borrower F Subordination Agreements provided that the Bank's interest in the underlying collateral for the Borrower F Loans was subordinated to Durden Enterprises in an amount equal to Durden Enterprise's contribution to the Borrower F Joint Ventures.

438. The Borrower F Subordination Agreements further provided that during the pendency of the Borrower F Loans, the Bank's right to payments from Borrower F was transferred to Durden Enterprises.

439. Borrower F had no prior relationship with Director Durden or Durden Enterprises.

440. The Borrower F Modifications, the Borrower F Joint Ventures, and the Borrower F Subordination Agreements each acknowledged that the Borrower F Loans were in default, that Durden Enterprises was in no way liable for the Borrower F Loans, and that any "upside" for both the Bank under the Borrower F

Loans and Borrower F under the actual development projects now belonged to Durden Enterprises.

441. The net effect of these transactions was to bring the defaulted-upon Borrower F Loans current "on paper" while in no way enhancing their ultimate collectability, and, in fact, decreasing the Bank's rights to the collateral through subordination to Durden Enterprises.

442. Defendants Caughran, Scott, Figlewski, Hall, and Maddox knowingly took steps to effect the scheme involving the Borrower F Modifications, the Borrower F Joint Ventures, and the Borrower F Subordination Agreements. For example, Defendant Caughran prepared the Borrower F Modifications, the Borrower F Joint Ventures, and the Borrower F Subordination Agreements; Defendant Scott executed the relevant documents under the Borrower F Joint Ventures; and Defendants Figlewski, Hall, and Maddox were involved in operational aspects of implementing the Borrower F Joint Ventures.

443. In February 2008, when the first tax payments following the execution of the Borrower F Joint Venture were due, Borrower F failed to pay the $16,804.78 that he was required to pay under the allocation formula specified in the Borrower F Joint Ventures.

444. Bank employees with responsibility for troubled asset workouts brought the issue of Borrower F's continuing lack of creditworthiness and inability to make his share of the first tax payments pursuant to the Borrower F Joint Ventures to Defendant Caughran. Defendant Caughran responded that he "was afraid that would be the case." The Borrower F Joint Ventures did not increase Borrower F's ability to meet his obligations under the Borrower F Loans.

445. As of September 30, 2009, the outstanding balance due for the four Borrower F Loans was $4.83 million and the combined ALLL carried by the Bank for the loans was $36,934.

446. On October 13, 2009, the FLC, which included Defendants Figlewski, Maddox, and Pomeroy, renewed the Borrower F Loans, although these Defendants knew that the Borrower F Loans were uncollectable.

447. At the time of these October 2009 renewals, Defendants Figlewski, Maddox, and Pomeroy knew that: (a) appraisals relied on for certain of the Borrower F Loans dated from 2003, 2004, and 2007, respectively; (b) financial statements for Borrower F were more than a year out of date; (c) Borrower F had a negative net worth.

448. As of December 31, 2009, the outstanding balance of the Borrower F Loans remained $4.83 million. Although the Bank increased its ALLL on the

Borrower F Loans as of December 31, 2009, the amount of ALLL stated for the loan was still materially insufficient. The Bank increased the ALLL for a Borrower F Loan with an outstanding balance of $908,500, from $5,542 to $873,749 (an ALLL of 96%). For the remaining three Borrower F Loans, however, which were virtually identical in the Bank's analysis and which had combined outstanding balances of $3.92 million, the Bank increased the combined ALLL from $31,392 to $322,027 (a combined ALLL of 8.2%).

449. At December 31, 2009, the ALLL for these remaining three Borrower F Loans combined should have been increased by at least $1.64 million beyond the $322,027 amount. Defendants Caughran, Figlewski, Hall, Maddox, Pomeroy, and Scott knew that the Borrower F loans were significantly impaired both before and after entry into the Borrower F Joint Ventures, but knowingly failed to take steps to ensure that these loans were accounted for properly.

D. Loans Held for Sale (Defendants Bailey, Hall, Scott, and White)

450. Defendants Bailey, Hall, Scott and White knowingly caused Superior's financial condition to be misstated by failing to properly account for certain loans that were being actively marketed for sale.

451. In or about October 2009, Superior engaged an investment bank (the "Investment Bank") to assist in the capital-raising efforts discussed in the OTS ROE.

452. On October 22, 2009, the Investment Bank met with Superior's Board and advised Superior that it needed to raise $200 million, and suggested that Superior sell $150 million of higher-risk, substandard or doubtful loans to assist in the capital-raising efforts.

453. On February 26, 2010, in response to the OTS MOUs, Superior filed both a Capital Plan and a Business Plan with the OTS.

454. The Capital Plan stated Superior's intention to, among other things, sell $100 million of the Bank's non-performing loans at a 50% loss during 2010.

455. The Business Plan stated that one of its goals and objectives was to "undertake a disposition of a significant portion of [non-performing assets] (at least a 50% reduction)… ."

456. The Business Plan further stated that the Bank planned to reduce its problem assets by undertaking "a 'bulk sale' of approximately $100 million of [non-performing assets], expected to realize approximately 50% in net proceeds."

457. By June 2010, Superior's management had determined to sell at least $200 million of inferior commercial and residential loans, as confirmed by its representations to the OTS and the actual marketing of such loans.

458. Superior's management had specifically identified and segregated the loans it planned to sell.

459. In a June 18, 2010 letter to the OTS, Defendant Bailey stated, "two distressed asset purchase companies are completing their due diligence for the purchase of over $200 million of non-performing and classified loans… ."

460. Defendant White reviewed a copy of this letter after receiving it from Defendant Bailey.

461. In a separate June 18, 2010 letter to the OTS, Defendant Scott, referring to Superior's "capital plan" stated, "As part of this plan we will use a portion of the proceeds to effectively eliminate the impact of our existing nonperforming assets as well as reduce the level of other classified assets through the sale of approximately $200MM."

462. On or about April 1, 2010, the Investment Bank solicited Investor A to purchase a portfolio of the Bank's non-performing loans. Defendants Bailey, Scott, and White communicated in writing the Bank's desire to sell the identified loans to Investor A at 50 to 60 cents-on-the-dollar. Investor A valued the loans at 10 cents-on-the-dollar based on its evaluation using information from March 31, 2010. In May 2010, Investor A's managing partner personally reviewed several of the Bank's CRE loan files related to the potential investment.

463. Email exchanges in June 2010 between the Investment Bank and Investor A show negotiations for the sale of some of the loans in the low 40 cents-on-the-dollar range. Further emails in and around June 2010 show that Defendants Bailey, Scott, and White were directly involved in negotiating the potential sale of loans to Investor A.

464. Following the completion of its due diligence, Investor A declined to purchase any loans from the Bank.

465. On or about May 2010, the Investment Bank solicited Investor B, a hedge fund specializing in distressed securities, to purchase a portfolio of the Bank's non-performing loans.

466. A June 2, 2010 email from Investor B to the Investment Bank noted the Bank's "need to receive a commitment in three weeks."

467. On June 9, 2010, Defendant Bailey emailed Defendants Caughran, Hall, Scott, and White and advised them that Investor B had successfully completed its electronic review of the loan files and data.

468. On June 25, 2010, Investor B submitted bids for three different portfolio scenarios which included both commercial and residential loans based on a March 31, 2010 status date. Investor B's bids ranged from approximately 26 cents-on-the-dollar to 38 cents-on-the-dollar for the portfolios, which had a range of unpaid principal balances from approximately $133.8 million to $219.2 million. The bids for the commercial real estate portions of the portfolios ranged from 19.75 to 32 cents-on-the-dollar.

469. Two of these portfolios included an outstanding personal loan to Defendant Scott in the amount of $50,705.

470. Defendants Bailey, Caughran, Hall, Scott, and White were among those involved in negotiating the potential sale of loans to Investor B.

471. Following the completion of its due diligence, Investor B declined to purchase any loans from the Bank.

472. On or about May 2010, the Investment Bank solicited Investor C, an investment fund manager whose business included buying distressed assets to purchase a portfolio of the Bank's non-performing loans.

473. On June 30, 2010, Investor C bid on 717 loans, based on a March 31, 2010 status date, with an outstanding principal balance of $261,791,006.

474. In its bid letter to Defendant Scott, Investor C stated, "[b]ased on our discussions with [the Investment Bank] and you, we understand that you are seeking a final, binding bid of at least 45% of unpaid principal balance on at least $200,000,000 of the $261,791,006 portfolio... . [W]e will endeavor to provide you with a satisfactory (45% of unpaid principal balance) final, binding bid for either the entire portfolio or the minimum $200,000,000 subset. Our ability to provide this final, binding bid is subject to our satisfactory due diligence and credit committee approval which we plan to complete over the next 45 days." Investor C also stated that the closing would, "… occur within 15 days from the Bid Date ("Closing Date")… ."

475. Defendants Bailey, Scott, and White were among those involved in negotiating a potential sale of loans to Investor C.

476. Following the completion of its due diligence, Investor C declined to purchase any loans from the Bank.

477. Superior's CAO and Defendant White were responsible for properly accounting for Superior's loans held for sale ("LHFS").

478. Superior's CAO was not informed by Defendants Bailey, Caughran, Hall, Scott, or White—or by anyone else—that these Defendants had segregated $100 million to $200 million of non-performing LHFS at 50 cents-on-the-dollar, that they had engaged the Investment Banker to actively solicit these loans for sale, and that there were at least two bidders for the LHFS. Superior's CAO was not copied on emails soliciting investors for the LHFS and was not involved in the negotiations. The failure of Defendants Bailey, Caughran, Hall, Scott and White to provide pertinent information regarding the LHFS to Superior's CAO prevented him from writing these LHFS down to fair value at June 30, 2010.

479. Superior's outside auditors were not advised by any of Defendants Bailey, Caughran, Hall, Scott and White that they were actively soliciting and attempting to sell approximately $200 million of non-performing loans.

480. In accordance with both GAAP and Superior's policies and procedures, the $261,791,006 of loans actively being marketed for sale were required to have been reclassified from "Loans, net of unearned income" account to the "LHFS" account that appeared on Superior's financial statements prior to the close of the quarter ended June 30, 2010 because a decision to sell these loans had been made before quarter-end, the LHFS had been specifically identified and segregated, and active marketing and solicitation efforts were underway.

481. None of the $261,791,006 in loans was reclassified to Superior's "LHFS" with a related write-down to fair value as required by GAAP.

482. At June 30, 2010, based on concessions by the Investment Bank and Superior in its negotiations to sell the loans, the $261,791,006 in loans should have been written down by $140,895,503, and the resulting fair value should have been reclassified from the "Loans, net of unearned income" account to the "LHFS" account.

483. The acts and omissions of Defendants Bailey, Caughran, Scott, and White resulted in Superior's failure to record the more than $261 million in LHFS, to be in conformity with GAAP.

E. Deferred Tax Asset (Defendants Bailey, Scott, and White)

484. A deferred tax asset ("DTA") is an asset on a company's balance sheet that represents the right to offset a future tax expense or obligation with a future tax benefit or refund. A DTA is properly recorded on the balance sheet when it is more likely than not that the DTA will be realized in a future period. GAAP requires companies to reduce DTAs by a valuation allowance if it is more likely than not that some portion of the DTA will not be realized.

485. Superior established a DTA at December 31, 2009. As of June 30, 2010, Superior was carrying a net DTA of approximately $35 million at full value

on its books, records, and accounts. Because of the deteriorated financial condition of Superior and the Bank, and other negative factors noted herein which were known by Defendants Bailey, Scott, and White, the DTA should have been fully written off by no later than the end of the quarter ending June 30, 2010. Countervailing evidence for such a write-down was absent. Such a write-down would have increased the reported income tax expense and the net loss on Superior's books, records, and accounts. Superior filed its Form 10-Q for the quarter ending June 30, 2010 on or about August 16, 2010.

486. Superior's CAO and Defendant White were responsible for accounting for the DTA. Defendant White prepared the forecasts used to justify recording the DTA at December 31, 2009. Under GAAP, Superior was required to evaluate whether the DTA could be realized in each reporting period, but it failed to do so for the quarters ended March 31, 2010 and June 30, 2010.

487. Defendants Bailey, Scott, and White knew of the DTA, and knew that the deteriorating financial condition of Superior and the Bank should have resulted in a full valuation allowance of the DTA no later than June 30, 2010. The deteriorating conditions of which these Defendants were aware included:

(a) By June 30, 2010, Superior was experiencing significant, ongoing cumulative losses, deterioration in its loan portfolio, and capital deficiencies;

(b) Superior and the Bank entered into MOUs on January 29, 2010, and received OTS Notices of Determination of Troubled Condition on June 15, 2010 advising that each of them was "in an unsafe and unsound condition;"

(c) The Bank was attempting to sell approximately $200 million of non-performing loans at a 50% loss, was projecting losses for the current year, and had incurred unrecorded significant losses on the loans referenced in this Complaint. At a meeting of Superior's Audit and Enterprise Risk Management Committee of the Board of Directors ("AERMC") on March 1, 2010, at which Defendants Bailey, Caughran, Scott, and White were present, Defendant White reported that the Securities and Exchange Commission was focusing on deferred tax assets. At another meeting of the AERMC held on August 11, 2010, at which Defendants Bailey, Caughran, and Hall were present, Defendant Scott reported that non-performing assets, net charge-offs and classified assets increased significantly during the second quarter, and that past due loans decreased slightly.

488. At a meeting of Superior's Certification Committee held on August 13, 2010, the CAO reported that the two major issues in the Form 10-Q for the quarter ending June 30, 2010 were the large provision for loan and lease losses for

the second quarter and the deferred tax benefit valuation. The CAO further reported that the current period loss required a change in estimates of future income to offset against the deferred tax asset. Defendants Caughran, Scott, and White were among those present at this meeting.

489. Defendants Bailey, Scott, and White did not disclose to the CAO that the Bank had segregated, and was actively marketing for sale at a discount, more than $200 million of non-performing loans, and that the Bank had received bids to purchase these loans at significant discounts.

490. On May 10, 2010, and on August 16, 2010, Defendants Bailey and White signed for Superior's outside auditors management representation letters for the quarters ended March 31, 2010 and June 30, 2010, each of which contained the following statements which these Defendants knew to be false: (1) "The Company has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities"; (2) "There are no material losses that have not been properly accrued or disclosed in the financial statements"; and (3) "Adequate provision has been made for any losses, costs, or expenses that may be incurred on loans or leases. All impaired loans have been properly recorded and disclosed in the consolidated financial statements in accordance with the provisions of ASC 310."

491. Superior recorded a full write-down of the DTA for the quarter ending September 30, 2010 at the recommendation of Superior's outside auditors. In connection with their review of Superior's Form 10-Q for the quarter ending June 30, 2010, the auditors had not been informed about the proposed sale of more than $200 million in non-performing loans for sale, the OTS Notices, the letter from OTS dated July 1, 2010 rejecting the Bank's Capital and Business Plans, or the failure to properly record the proper amount of ALLL for certain loans.

F. False and Misleading Management's Discussion and Analysis (Defendants Scott, Caughran, White, Bailey, Parrish, and Roberts)

492. Defendants Scott, Caughran, White, Bailey, Parrish, and Roberts caused Superior to disclose false and misleading information including material changes, and to omit material facts, in the MD&A included in Superior's reports on Form 10-Q, Form 10-K, and registration statements on Form S-8. Such false and misleading material representations and material omissions related to Superior's operations, financial statements, financial position, results of operations, ALLL, LHFS, DTA, loan portfolio, related party transactions, joint venture related loans and/or the inability to pay dividends because of, among other reasons, dividend restrictions imposed by the OTS upon Superior and the Bank.

G. False and Misleading Press Releases (Defendants Bailey and White)

493. Defendants White and Bailey caused Superior to issue false and misleading press releases covering the quarters ended March 31, 2009, June 30, 2009, September 30, 2009, December 31, 2009, March 31, 2010, and September 30, 2009. Each of these press releases contained materially false and misleading statements and material omissions related to Superior's and the Bank's operations, financial statements, financial position, results of operations, ALLL, LHFS, DTA, loan portfolio, related party transactions, joint venture related loans and/or the inability to pay dividends because of, among other reasons, dividend restrictions imposed by the OTS.

H. False and Misleading Proxy Statements (Defendants Scott, Bailey, Parrish, and Roberts)

494. Defendants Scott, Bailey, Parrish, and Roberts reviewed and approved the filing of Superior's Proxy Statements filed with the Commission and distributed to investors on or about March 24, 2008, March 20, 2009, and March 19, 2010. Each of these Proxy Statements falsely stated that transactions with Superior's officers and directors were consummated on terms and conditions reflective of an arm's length basis, in the ordinary course of business on substantially the same terms and conditions including collateral, as those prevailing

at the same time for comparable transactions with other customers, and did not involve more than normal credit risk or other unfavorable features. The Joint Venture transactions involving Director Durden, and the Breakers Properties Loans involving Director Roberts and Earl Durden, are examples of related party transactions during the relevant period that were not consummated at arm's length nor in the ordinary course of business.

I. False Statements and Omissions to Accountants (Defendants White, Caughran, Hall, Bailey, Scott, and Figlewski)

495. During the relevant period, Defendants Caughran, Scott, White, and Superior's Chief Accounting Officer were members of the Certification Committee that reviewed Superior's draft annual reports on Form 10-K and quarterly reports on Form 10-Q to be filed with the Commission and distributed to investors, and all certifications it received from employees and officers of Superior and the Bank relating to filings made with the Commission.

496. The certifications provided to the Certification Committee stated, among other things, that: (a) "The SEC Filing accurately and completely presents in all material respects the financial condition, results of operations and cash flows of the operations of the Company as of and for the Reporting Period"; (b) "There have been no unreported incidents of fraud or other illegal acts related to the Applicable Operations of the Company"; (c) There has been no change in the

Company's disclosure controls and procedures or internal controls over financial reporting with respect to the Applicable Operations that has materially affected, or is reasonably likely to materially affect, such disclosure controls or internal control over financial reporting"; (d) the signor is "unaware of any accounting entries or adjustments with respect to the Applicable Operations which were not properly posted, regardless of materiality"; (e) "…(i) the risk ratings on all loans material to the Company's financial statements are current and consistent with the Company's risk rating methodology; (ii) payment and delinquency entries are current and accurate in all material respects; (iii) loan classifications (including impaired loans and troubled debt restructuring) are current and accurate in all material respects; (iv) there are no unrecognized material problem assets; … and (vii) the loan loss reserve is appropriate to cover losses inherent in the loan portfolio"; (f) "…(i) the Company maintains effective internal control over financial reporting; (ii) the Company maintains adequate systems and processes to record all items required to be recorded under generally accepted accounting principles and applicable regulatory requirements"; and (g) "From the end of the Reporting Period to the date of this Certification, with respect to the Applicable Operations there has been no material change to the financial condition, results of operations and cash flow of the Company or to any item set forth above."

497. Defendants White, Caughran, Hall, Bailey, Scott, and Figlewski falsely certified to the completeness and accuracy of Superior's annual reports on Form 10-K and quarterly reports on Form 10-Q to be filed with the Commission and distributed to investors, despite their knowledge of materially false and misleading statements contained within the filings and material omissions from the filings. Defendant Bailey signed such certifications for the filings made in 2008 and 2009. Defendants Caughran, Figlewski, Hall and Scott each signed such certifications for the filings made in 2009 and 2010. In addition, during 2008, 2009, and 2010, Defendants Bailey and White each signed Management Letters of Representation provided to Superior's outside auditors which contained materially false and misleading statements and material omissions.

498. Defendant Figlewski also signed certifications from at least the first quarter of 2009 through the third quarter of 2010 in which he falsely stated, among other things, that he had received and reviewed Superior's annual reports on Form 10-K and quarterly reports on Form 10-Q, prior to filing with the Commission.

499. Defendants White, Caughran, Hall, Bailey, and Scott failed to provide information, and Defendants Bailey and White made materially false and misleading statements, to Superior's Chief Accounting Officer and to its outside

auditors regarding the proposed sale of more than $200 million of non-performing loans by Superior in and around June of 2010.

500. Defendants Bailey and White made materially false and misleading statements and failed to provide information to Superior's Chief Accounting Officer and its outside auditors regarding the proposed sale of more than $200 million of non-performing loans, the OTS Notice, the July 2010 letter from the OTS which rejected the Bank's Capital and Business Plans, and the failure to properly record the ALLL for certain non-performing loans.

J. False Sarbanes-Oxley Act Certifications

501. A public company's principal executive officer and principal financial officer are required to certify to the best of their knowledge that there are no untrue statements of material fact or omissions of material fact in periodic reports filed with the Commission.

502. As CEO, during all relevant periods, Defendant Bailey signed certifications pursuant to Section 302 of the Sarbanes-Oxley Act in which he certified, among other things, that: (1) the information contained in the periodic reports filed with the Commission fairly presented, in all material respects, the financial condition and results of Superior; (2) he had disclosed any fraud involving management or other employees who had a significant role in the

company's internal control over financial reporting; and (3) he had designed, or caused to be designed, internal controls over financial reporting to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

503. Defendant Bailey's certifications pursuant to Section 302 of the Sarbanes-Oxley Act were false, and he knew that they were false at the time he made them. For example, Defendant Bailey knew of the following, among other things, that rendered his certifications false: (i) false and misleading information that made the information presented in Superior's quarterly and annual reports not fairly represent the Bank's financial condition and results; (ii) material misstatements and omissions in the Bank's financial statements tied to the Bank's loan portfolio; (iii) Superior's failure to conform with GAAP; and (iv) insufficient internal accounting controls over properly measuring impaired loans and accounting for the ALLL.

504. As CFO, Defendant White signed similar certifications pursuant to Section 302 of the Sarbanes-Oxley Act. By the second quarter of 2010, Defendant White had knowledge of the following, among other things, that rendered his certifications knowingly false: (1) that certain loans of Borrower A should have

been impaired and the ALLL adjusted; (2) that certain loans in the Bank's loan portfolio should have been classified as LHFS; (3) that the information contained in the period reports filed with the Commission did not accurately reflect Superior's financial condition and results; and (4) that the internal controls over financial reporting were insufficient to provide reasonable assurance regarding the reliability of Superior's financial statements.

K. The Offering Fraud (Defendants Bailey, Hall, Pomeroy, and White)

505. As part of its capital-raising efforts mandated by OTS in or around January of 2010, Superior planned to raise between $150 million and $250 million of new equity investments.

506. In the second quarter of 2010, Defendant Pomeroy suggested to Defendants Bailey and Hall that they solicit an investment from Investor D, a Florida doctor who had a relationship with the Bank as a guarantor on a loan to a third-party.

507. On May 2, 2010, Defendants Hall and Pomeroy made a presentation to Investor D at his Florida home during which they solicited his purchase of cumulative convertible preferred stock in Superior.

508. During the presentation, Defendant Hall told Investor D that Superior was "strong" and "healthy," and that the Bank had a low number of non-

performing loans. Defendants Hall and Pomeroy failed to disclose the true financial condition of Superior and the true condition of the Bank's loan portfolio.

509. During the presentation, Defendant Hall told Investor D that some of the Bank's assets which the bank regulators at the OTS had identified as bad, including the Boynton-Whitworth Loans, were actually performing. Defendants Hall and Pomeroy failed to disclose the true condition of the Boynton-Whitworth Loans, including the inability of the borrower to fully repay the loan.

510. Defendants Hall and Pomeroy also made use of a written "pitch-book" in their solicitation of Investor D on May 2, 2010, which Defendants Bailey and White prepared. The pitch-book stated that Superior had "no asset quality issues" and provided excerpted data from Superior's December 31, 2009 financial statements.

511. A few days after the May 2, 2010 presentation, Defendants Bailey and Hall met with Investor D and proposed that he make a $10 million equity investment in Superior.

512. Defendants Bailey and Hall represented to Investor D that his investment of $10 million in cumulative convertible preferred stock would result in Investor D owning 58% of Superior post-conversion of the cumulative convertible preferred stock.

513. To further induce Investor D to invest in Superior, Defendant Hall told Investor D that if he invested $10 million in Superior, the Bank would extend an $8 million business loan to Investor D. On or about June 8, 2010, Defendant Pomeroy sent Investor D a term sheet for a loan for up to $8 million by the Bank.

514. Defendants Bailey and Hall also provided documentation to Investor D that represented Investor D would be paid quarterly dividends at the rate of 12% per annum.

515. Defendant Hall falsely represented to Investor D, upon inquiry by the latter, that Investor D would be neither the first nor the largest investor in the contemplated offering, and that there were already other investors. In fact, Investor D would be—and did become—the first and largest investor in the offering.

516. The dividend schedule provided to Investor D by Defendants Bailey and Hall and their representations about the financial condition of the Bank falsely presented the contemplated $10 million investment in Superior by Investor D to be short-term and low risk.

517. At Investor D's request, Defendant Pomeroy reviewed a draft of a stock purchase agreement between Superior and an Investor D entity. The draft stock purchase agreement that Defendant Pomeroy reviewed specifically agreed to

pay the Investor D entity quarterly dividends at the rate of 12% per annum. At the time that Defendant Pomeroy reviewed the draft stock purchase agreement, he was aware that Superior and the Bank had entered into MOUs with the OTS. Defendant Pomeroy never disclosed to Investor D any of the restrictions to which Superior and the Bank were subject as a result of the OTS MOUs.

518. On or about May 6, 2010, Investor D entered into a series of stock purchase agreements with Superior, on behalf of several entities that Investor D owned, for the purchase of $10 million of cumulative convertible preferred stock (collectively, the "SPA"), and contemporaneously wired $10 million to Superior.

519. Defendant White executed the SPA on behalf of Superior. The SPA memorialized Superior's agreement to pay quarterly dividends at the rate of 12% per annum to Investor D.

520. Defendants Bailey, Hall, Pomeroy, and White knowingly made material false statements and misrepresentations to Investor D, and failed to disclose to Investor D facts which would have rendered their statements to him materially false and misleading, in order to induce him to invest in Superior and purchase $10 million of cumulative convertible preferred stock.

521. Defendants Bailey, Hall, Pomeroy and White knowingly misrepresented Superior's financial condition and the quality of the Bank's loan

portfolio in presentations to Investor D and/or in written materials provided to Investor D.

522. The Bank never provided the $8 million loan to Investor D that Defendant Hall had promised.

523. Defendants Bailey, Hall, Pomeroy, and White knowingly misrepresented to Investor D that 12% annual dividends would be paid to him. Each of Defendants Bailey, Hall, Pomeroy, and White knew that the OTS MOUs prohibited payment of dividends absent pre-approval from the OTS and that such approval was overwhelmingly unlikely. Each of Defendants Bailey, Hall, Pomeroy, and White failed to disclose to Investor D that the MOUs prohibited the payment of dividends absent pre-approval by OTS.

524. On August 20, 2010, the OTS denied Superior's request to pay dividends, citing its concern about the financial condition of both Superior and the Bank and the need for Superior to conserve its cash whenever possible.

525. Investor D never received any dividends from his cumulative convertible preferred stock from Superior.

526. Investor D continued to hold the $10 million of cumulative convertible preferred stock in Superior when the Bank failed, and Investor D's stock became worthless.

L. **Fraudulent Reports Filed with the Commission (Defendants Bailey, Caughran, Figlewski, Hall, Maddox, McKinnon, Parrish, Pomeroy, Roberts, Scott, and White)**

527. Each of Superior's public filings with the Commission for the quarter ended March 31, 2009 through the quarter ended September 30, 2010, the last of which was made on November 15, 2010, contained multiple material misstatements, statements rendered materially misleading by omission, or specific disclosure requirements otherwise ignored arising from the fraudulent conduct of the Defendants as described herein. These misstatements and omissions included, but were not limited to: (1) current and historical financial statements materially understating the ALLL and materially overstating income; (2) MD&As that omitted key trend information relating to the ALLL, income, and dividends; and (3) false descriptions of lending standards, related party transactions, and controls and processes related to financial reporting. A table listing the public filings that Superior made with the Commission that contained materially false and misleading statements and material omissions, and specifying the Defendants whose knowing and intentional misconduct resulted in materially false and misleading statements and omissions in the various public filings, is included at Appendix D hereto, which is incorporated herein by reference.

528. The fraudulent loan schemes, as well as the impact of the LHFS and DTA treatment, resulted in Superior's financial statements materially overstating its income and understating its losses. In fiscal year 2009, Superior's Income (Loss) before Income Taxes was misstated by approximately $80.2 million—or 71%—for the year, and was materially misstated each quarter, including a misstatement of approximately 107% for the third quarter. For the third quarter, Superior reported income when it should have reported a loss. In fiscal year 2009, Superior's Net Income (Loss) Applicable to Common Stockholders was misstated by approximately $80.2 million—or 99%—for the year, and was materially misstated each quarter, including a misstatement of approximately 313% for the fourth quarter. In fiscal year 2010, Superior's Income (Loss) before Income Taxes was misstated by approximately $197.9 million—or 54%—for the first three quarters combined (year-to-date), and was materially misstated for each of the first three quarters, including a misstatement of approximately 79% for the first quarter. In fiscal year 2010, Superior's Net Income (Loss) Applicable to Common Stockholders was misstated by approximately $232.9 million—or 54%—for the first three quarters combined (year-to-date), and was materially misstated for each of the first three quarters, including a misstatement of approximately 86% for the first quarter. Appendix C hereto includes tables showing the approximate amounts

of misstatements in the Income (Loss) Before Income Taxes and Net Income (Loss) Applicable to Common Stockholders reported in Superior's financial statements for each quarter of 2009 and the first three quarters of 2010.

COUNT I — FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)] (All Defendants)

529. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

530. By engaging in the conduct described above, the Defendants, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, knowingly, willfully, or with severe recklessness, employed devices, schemes, or artifices to defraud.

531. In engaging in such conduct, the Defendants acted with scienter.

532. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II — FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act
[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] (All Defendants)

533. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

534. By engaging in the conduct described above, the Defendants, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails:

a. obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

535. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III — FRAUD

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and 10b-5(c) thereunder [17 C.F.R. §§ 240.10b-5(a) and 240.10b-5(c)] (Defendants Bailey, Caughran, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White)

536. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

537. By engaging in the conduct described above, Defendants Bailey, Caughran, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White, directly or indirectly, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, knowingly, willfully, or with severe recklessness:

a. employed devices, schemes, or artifices to defraud; and

b. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities.

538. In engaging in such conduct, Defendants Bailey, Caughran, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White acted with scienter.

539. By reason of the foregoing, Defendants Bailey, Caughran, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange

Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and 10b-5(c) thereunder [17 C.F.R. §§ 240.10b-5(a) and 240.10b-5(c)].

COUNT IV — FRAUD

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5(b)] (Defendants Bailey, Hall, Pomeroy, Scott, and White)

540. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

541. By engaging in the conduct described above, Defendants Bailey, Hall, Pomeroy, Scott, and White, directly or indirectly, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, knowingly, willfully, or with severe recklessness, made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

542. By reason of the foregoing, Defendants Bailey, Hall, Pomeroy, Scott, and White, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5(b)].

COUNT V — AIDING AND ABETTING FRAUD

Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] (Defendants Bailey, Caughran, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White)

543. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference

544. By engaging in the conduct described above, Superior, directly or indirectly, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, knowingly, willfully, or with severe recklessness, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of a material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities.

545. By engaging in the conduct described above, Defendants Bailey, Caughran, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White aided and abetted violations by Superior of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] in that they, with knowledge of the primary violations by Superior, provided substantial assistance to Superior in the commission of its violations.

546. By reason of the foregoing, Defendants Bailey, Caughran, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White aided and abetted and, unless enjoined, will continue to aid and abet, violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT VI — CIRCUMVENTION OF INTERNAL CONTROLS AND FALSIFIED BOOKS AND RECORDS

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] (Defendants Bailey, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott and White)

547. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

548. By engaging in the conduct described above, Defendants Bailey, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White knowingly circumvented, or knowingly failed to implement, a system of internal accounting controls and knowingly falsified books, records, or accounts of Superior.

549. By reason of the foregoing, Defendants Bailey, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White have violated and, unless enjoined, will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

COUNT VII — FALSIFIED BOOKS AND RECORDS

Violations of Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]
(Defendants Bailey, Figlewski, Hall, Maddox,
McKinnon, Pomeroy, Scott, and White)

550. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

551. By engaging in the conduct described above, Defendants Bailey, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White, directly or indirectly, falsified or caused to be falsified books, records, or accounts of Superior.

552. By reason of the foregoing, Defendants Bailey, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White have violated and, unless enjoined, will continue to violate Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

COUNT VIII — FALSE STATEMENTS TO ACCOUNTANTS

Violations of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2]
(Defendants Bailey, Caughran, Figlewski, Scott, Hall, and White)

553. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

554. By engaging in the conduct described above, Defendants Bailey, Caughran, Figlewski, Scott, Hall, and White, directly or indirectly, as officers of Superior, in connection with the preparation or filing of documents or reports required to be filed with the Commission:

a. made or caused to be made misrepresentation or omissions to an accountant; or

b. omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant.

555. By reason of the foregoing, Defendants Bailey, Caughran, Figlewski, Scott, Hall, and White have violated and, unless enjoined, will continue to violate Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

COUNT IX — VIOLATIONS OF CERTIFICATIONS

Violations of Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] (Defendants Bailey and White)

556. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

557. By engaging in the conduct described above, Defendants Bailey and White, as officers of Superior, signed certifications that were required to be made pursuant to Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] and that were included in Superior's filings, which were false and misleading when made.

558. By reason of the foregoing, Defendants Bailey and White have violated and, unless enjoined, will continue to violate Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

COUNT X — AIDING AND ABETTING FALSE SEC FILINGS

Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] (Defendants Bailey, Hall, Scott, and White)

559. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

560. By engaging in the conduct described above, Superior violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11,

and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] by failing to timely and accurately file the reports as the Commission has prescribed, and failed to include, in addition to the information expressly required to be stated in the reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, and by filing or causing to be filed with the Commission materially false and misleading financial statements.

561. By engaging in the conduct described above, Defendants Bailey, Scott, and White aided and abetted violations by Superior of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] in that they, with knowledge of the primary violations by Superior, provided substantial assistance to Superior in the commission of its violations.

562. By reason of the foregoing, Defendants Bailey, Hall, Scott, and White have aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

COUNT XI — AIDING AND ABETTING FALSE SEC FILINGS

Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] (Defendants Caughran, Figlewski, Maddox, McKinnon, Parrish, Pomeroy, and Roberts)

563. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

564. By engaging in the conduct described above, Superior violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] by failing to timely and accurately file the reports as the Commission has prescribed, and failed to include, in addition to the information expressly required to be stated in the reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, and by filing or causing to be filed with the Commission materially false and misleading financial statements.

565. By engaging in the conduct described above, Defendants Caughran, Figlewski, Maddox, McKinnon, Parrish, Pomeroy, and Roberts aided and abetted violations by Superior of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] in that they, with knowledge of the primary violations

by Superior, provided substantial assistance to Superior in the commission of its violations.

566. By reason of the foregoing, Defendants Caughran, Figlewski, Hall, Maddox, McKinnon, Parrish, Pomeroy, and Roberts have aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

COUNT XII — AIDING AND ABETTING BOOKS AND RECORDS AND INTERNAL CONTROL VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] (Defendants Bailey, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White)

567. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

568. By engaging in the conduct described above, Superior, an issuer of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], in violation of Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)]: (a) failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; and (b) failed to devise and maintain a system of internal controls sufficient to provide

reasonable assurances that: (i) transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (ii) to maintain accountability of assets.

569. By engaging in the conduct described above, Defendants Bailey, Figlewski, Hall, Maddox, McKinnon, Pomeroy, Scott, and White aided and abetted violations by Superior of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] in that they, with knowledge of the primary violations by Superior, provided substantial assistance to Superior in the commission of its violations.

570. By reason of the foregoing, Defendants Bailey, Figlewski, Hall, Maddox, McKinnon, Pomeroy, and Scott have aided and abetted and, unless enjoined, will continue to aid and abet violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

COUNT XIII — FALSE PROXY STATEMENTS

Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9] (Defendants Bailey, Parrish, Roberts, and Scott)

571. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

572. By engaging in the conduct described above, Defendants Bailey, Parrish, Roberts, and Scott, by the use of the mails or by means or instrumentalities of interstate commerce or of facilities of a national securities exchange or otherwise, knowingly, willfully, with severe recklessness, or negligently, solicited or permitted the use of their respective names to solicit by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, or omitted to state material facts necessary in order to make the statements therein not false or misleading, or necessary to correct any statements in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

573. By reason of the foregoing, Defendants Bailey, Parrish, Roberts, and Scott have violated and, unless enjoined, will continue to violate Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9].

COUNT XIV — AIDING AND ABETTING FALSE PROXY STATEMENTS

Aiding and Abetting Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9] (Defendants Bailey, Parrish, Roberts, and Scott)

574. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

575. By engaging in the conduct described above, Superior has, in violation of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9], by the use of the mails or by means or instrumentalities of interstate commerce or of facilities of a national securities exchange or otherwise, knowingly, willfully, with severe recklessness, or negligently, solicited or permitted the use of its name to solicit by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, or omitted to state material facts necessary in order to make the statements therein not false or

misleading, or necessary to correct any statements in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

576. By engaging in the conduct described above, Defendants Bailey, Parrish, Roberts, and Scott aided and abetted violations by Superior of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9] in that they, with knowledge of the primary violations by Superior, provided substantial assistance to Superior in the commission of its violations.

577. By reason of the foregoing, Defendants Bailey, Parrish, Roberts, and Scott have aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9].

COUNT XV — CONTROL PERSON LIABILITY

Control Person Liability Under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] (Defendants Bailey and White)

578. Paragraphs 1 through 528 are hereby realleged and are incorporated herein by reference.

579. By engaging in the conduct described above, Superior has violated Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)] and Rules 10b-

5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, and 240.14a-9].

580. At all times relevant to the allegations in this Complaint, Defendant Bailey controlled Superior.

581. At all times relevant to the allegations in this Complaint, Defendamt White controlled Superior.

582. By reason of the foregoing, and pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Defendant Bailey is jointly and severally liable with, and to the same extent as, Superior for violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, and 240.14a-9].

583. By reason of the foregoing, and pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Defendant White is jointly and severally liable with, and to the same extent as, Superior for violations of Sections 10(b), 13(a), and 14(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), and 78n(a)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13 and 14a-9 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, and 240.14a-9].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays for:

I.

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the Defendants named herein committed the violations alleged herein.

II.

A permanent injunction enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of the injunction, by personal service or otherwise, and each of them, from violating, directly or indirectly, the provisions alleged to have been violated.

III.

An order pursuant to Section 21(d)(2) of the Exchange Act imposing a permanent Officer and Director Bar against all Defendants.

IV.

An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] imposing civil penalties against all Defendants.

V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Commission demands trial by jury in this action of all issues so triable.

Dated: January 13, 2016

Respectfully submitted,

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