

1 CLOTHILDE V. HEWLETT  
Commissioner  
2 MARY ANN SMITH  
Deputy Commissioner  
3 MIRANDA LEKANDER  
Assistant Chief Counsel  
4 PAUL YEE (State Bar No. 142381)  
Senior Counsel  
5 Department of Financial Protection and Innovation  
One Sansome Street, Suite 600  
6 San Francisco, California 94104-4448  
Telephone: (415) 972-8544  
7 Facsimile: (415) 972-8500

8 Attorneys for the Complainant

9  
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: ) CONSENT ORDER  
)  
13 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, )  
14 )  
15 Complainant, )  
)  
16 v. )  
)  
17 MARK TRONCALE, )  
)  
18 Respondent. )  
19 )  
20 )

21 This Consent Order is entered into between the Commissioner of Financial Protection  
22 and Innovation (Complainant or Commissioner) and Respondent Mark Troncale (Respondent or  
23 Troncale) and is made with respect to the following facts:

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I.

RECITALS

A. The Commissioner is authorized to administer and enforce the provisions of the California Financial Institutions Law (FIL) (Cal. Fin. Code §§ 99-819 (West 2013)).

B. At all relevant times, Nano Banc, headquartered at 7755 Irvine Center, 3<sup>rd</sup> Floor, Irvine, California 92618, was a California chartered bank and member of the Federal Reserve System.

C. In early 2018, Mark Troncale (Troncale), among several other investors, purchased Commerce Bank of Temecula Valley and renamed it Nano Banc as of May 1, 2018.

D. Nano Banc is a wholly owned subsidiary of Nano Financial Holdings, Inc. (NFH). Therefore, NFH qualifies as a “bank holding company” pursuant to section 1280. As the holding company of Nano Banc, NFH has influence over the affairs, policies and controls at Nano Banc.

E. At all relevant times, Troncale served on the boards of Nano Banc and Nano Banc’s holding company, NFH. Allegiant United Holdings (AUH), in turn, is a significant shareholder of NFH. Presently, Troncale owns 50 percent of AUH.

F. Troncale was employed as the President of Nano Banc starting on May 21, 2018. The President is an executive level position and requires regulatory approval. Troncale was approved to serve as President of Nano Banc by the Commissioner at the outset of his tenure.

G. The Commissioner alleges that in September 2021, Troncale approved a payroll advance reimbursement modification for a Nano Banc employee and was aware that the employee was intending to use the modification to mislead another financial institution regarding the employee’s income in order for the employee to obtain better loan terms. Troncale neither admits nor denies these findings.

H. Financial Code section 585 states in pertinent part:

If, after notice and an opportunity to be heard, the commissioner finds that any of the factors set forth in subdivision (a), any of the factors set forth in subdivision (b), and any facts set forth in subdivision (c) are true with respect to a subject person of a subject institution or holding company, the commissioner may issue an order suspending or removing the subject person from the subject person’s office, if any, with the subject institution or holding company, and prohibiting the subject person from participating in any manner in the conduct of the affairs of

1 the subject institution or holding company without the approval of the  
2 commissioner . . .

3 **II.**

4 **TERMS AND CONDITIONS**

5 1. Purpose. The parties intend to resolve this matter for the purpose of judicial  
6 economy and expediency and without the uncertainty and expense of a hearing or other  
7 litigation.

8 2. Removal and Prohibition Order. Pursuant to Financial Code section 585, the  
9 Commissioner hereby orders that Mark Troncale be removed from the office of President of  
10 Nano Banc as of the effective date of this Consent Order, as defined in paragraph 25, and is  
11 prohibited from participating in any manner in the conduct of the affairs of Nano Banc and/or  
12 Nano Financial Holdings, Inc. without first receiving the approval of the Commissioner  
(Removal and Prohibition Order).

13 3. Procedure to Seek Participation. Should Troncale seek to participate in the  
14 conduct of the affairs of Nano Banc or NFH, Troncale shall first receive such approval from the  
15 Commissioner in writing, by emailing or writing to the Commissioner’s representative as noted  
16 in paragraph 22. Troncale’s sale, disbursement, or divestiture of shares he owns in NFH or in  
17 AUH, or his exercise of shareholder rights in compliance with applicable statutes or regulations,  
18 is not considered participating in the affairs of Nano Banc or NFH.

19 4. Consent to Removal and Prohibition Order. Troncale hereby consents to the  
20 Removal and Prohibition Order as set forth in paragraph 2.

21 5. Consent Order Coverage. The parties further acknowledge that this Consent Order  
22 is intended to constitute a full, final, and complete resolution of the matter set forth in paragraph  
23 G herein except any order the Commissioner may issue regarding prior approval of acquisition  
24 and control.

25 6. Waiver of Hearing Rights. Troncale acknowledges the Commissioner is ready,  
26 willing, and able to proceed with a hearing on the Removal and Prohibition Order on the charges  
27 contained in this Consent Order. Troncale hereby waives the right to any hearings, and to any  
28 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the

1 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
2 provision of law. Troncale further expressly waives any requirement for the filing of an  
3 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,  
4 Troncale effectively consents to this Consent Order becoming final.

5 7. Failure to Comply with Consent Order. Troncale agrees that if he fails to comply  
6 with the terms of this Consent Order, the Commissioner may, in addition to all other available  
7 remedies she may invoke under the FIL, summarily prohibit Troncale from participating in the  
8 affairs of Nano Banc and NFH until Troncale is in compliance. Troncale waives any notice and  
9 hearing rights to contest such Order which may be afforded under the FIL, the California  
10 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of  
11 law in connection therewith.

12 8. Information Willfully Withheld or Misrepresented. This Consent Order may be  
13 revoked, and the Commissioner may pursue any and all remedies available under law against  
14 Troncale, if the Commissioner discovers that Troncale knowingly or willfully withheld or  
15 misrepresented information used for and relied upon in this Consent Order.

16 9. Future Actions by Commissioner. If Troncale fails to comply with the terms of  
17 the Consent Order, the Commissioner may institute proceedings for any and all violations  
18 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any  
19 future actions against Respondent for any and all unknown violations of the FIL.

20 10. Assisting Other Agencies. Nothing in this Consent Order limits the  
21 Commissioner's ability to assist any other government agency (city, county, state or federal)  
22 with any prosecution, administrative, civil or criminal action brought by that agency against  
23 Troncale or any other person based on any of the activities alleged in this matter or otherwise.

24 11. No Presumption Against Drafter. Each party acknowledges that it has had the  
25 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the  
26 parties intend no presumption for or against the drafting party will apply in construing any part  
27 of this Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or  
28 corresponding provisions of any successor statute, which provide that in cases of uncertainty,

1 language of a contract should be interpreted most strongly against the party who caused the  
2 uncertainty to exist.

3 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees  
4 that it has had the opportunity to receive independent advice from an attorney(s) and/or  
5 representatives with respect to the advisability of executing this Consent Order.

6 13. Headings. The headings to the paragraphs of this Consent Order are inserted for  
7 convenience only and will not be deemed a part hereof or affect the construction or interpretation  
8 of the provisions hereof.

9 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
10 interest.

11 15. Reliance. Each of the parties represents, warrants, and agrees that in executing  
12 this Consent Order, it has relied solely on the statements set forth herein and the advice of its  
13 own legal counsel, if represented. Each of the parties further represents, warrants, and agrees that  
14 in executing this Consent Order it has placed no reliance on any statement, representation, or  
15 promise of any other party, or any other person or entity not expressly set forth herein, or upon  
16 the failure of any party or any other person or entity to make any statement, representation, or  
17 disclosure of anything whatsoever. The parties have included this clause: (1) to preclude any  
18 claim that any party was in any way fraudulently induced to execute this Consent Order; and (2)  
19 to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the  
20 terms of this Consent Order.

21 16. Waiver, Amendments, and Modifications. No waiver, amendment, or  
22 modification of this Consent Order will be valid or binding unless it is in writing and signed by  
23 each of the parties. The waiver of any provision of this Consent Order will not be deemed a  
24 waiver of any other provision. No waiver by either party of any breach of, or of compliance  
25 with, any condition or provision of this Consent Order by the other party will be considered a  
26 waiver of any other condition or provision or of the same condition or provision at another time.

27 17. Full Integration. This Consent Order is the final written expression and the  
28 complete and exclusive statement of all the agreements, conditions, promises, representations,

1 and covenants between the parties with respect to the subject matter hereof, and supersedes all  
 2 prior or contemporaneous agreements, negotiations, representations, understandings, and  
 3 discussions between and among the parties, their respective representatives, and any other person  
 4 or entity, with respect to the subject matter covered hereby.

5 18. Governing Law. This Consent Order will be governed by and construed in  
 6 accordance with California law. Each of the parties hereto consents to the jurisdiction of such  
 7 court and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an  
 8 inconvenient forum to the maintenance of such action or proceeding in such court.

9 19. Counterparts. This Consent Order may be executed in one or more separate  
 10 counterparts, each of which when so executed, shall be deemed an original. Such counterparts  
 11 shall together constitute a single document.

12 20. Effect Upon Future Proceedings. If Troncale applies for any license, permit, or  
 13 qualification under the Commissioner’s jurisdiction, or is the subject of any future action by the  
 14 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for  
 15 the purpose of such application(s) or enforcement proceeding(s).

16 21. Voluntary Agreement. Troncale hereby enters into this Consent Order voluntarily  
 17 and without coercion and acknowledges that no promises, threats, or assurances have been made  
 18 by the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each  
 19 represent and acknowledge that he, she or it is executing this Consent Order completely  
 20 voluntarily and without any duress or undue influence of any kind from any source.

21 22. Notice. Any notice required under this Consent Order shall be provided to each  
 22 party at the following addresses:

23 To Respondent Mark Troncale: Mark Troncale  
 24 marktroncale@gmail.com

25 To the Commissioner: Paul Yee, Senior Counsel  
 26 Department of Financial Protection and Innovation  
 27 One Sansome Street, Suite 600  
 28 San Francisco, California 94104-4448  
[Paul.Yee@dfpi.ca.gov](mailto:Paul.Yee@dfpi.ca.gov)

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23. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

24. Public Record. Troncale hereby acknowledges that the Consent Order is and will be a matter of public record.

25. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Troncale at the following email address: marktroncale@gmail.com.

26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertakes the obligations set forth herein.

Dated: September 29, 2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: September 28, 2022

By \_\_\_\_\_  
MARK TRONCALE