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

12 In the Matter of: )  
 ) SETTLEMENT AGREEMENT  
13 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, )  
14 )  
15 Complainant, )  
 )  
16 v. )  
 )  
17 CALIFORNIA BUSINESS BANK, )  
 )  
18 Respondent. )  
19 )  
20 )

21 This Settlement Agreement is entered into between the Commissioner of Financial  
22 Protection and Innovation (Complainant or Commissioner) and Respondent California Business  
23 Bank (Respondent or Bank) and is made with respect to the following facts:

24 I.

25 RECITALS

26 A. The Commissioner is authorized to administer and enforce the provisions of the  
27 California Financial Institutions Law (FIL) (Fin. Code, § 99 *et seq.*).<sup>1</sup>

28 \_\_\_\_\_  
<sup>1</sup> All further statutory references will be to the California Financial Code, unless otherwise indicated.

1 B. At all relevant times, California Business Bank (Bank), headquartered at 3200 El  
2 Camino Real, Suite 220, Irvine, California 92602, was a California chartered bank and insured  
3 by the Federal Deposit Insurance Corporation (FDIC).

4 C. At all relevant times, Richard Tan (Tan) was the Bank's largest shareholder and  
5 Chairman of the Bank's Board of Directors. Tan has been the controlling shareholder since 2013.

6 D. On February 27, 2020, the FDIC and the Commissioner entered a joint consent  
7 order with the Bank (2020 Consent Order). The 2020 Consent Order required the Bank to have  
8 and maintain qualified management, including:

- 9 1. A chief executive officer with proven ability in managing a bank of  
10 comparable size and risk profile;
- 11 2. A chief financial officer with proven ability in all aspects of financial  
12 management; and
- 13 3. A senior lending officer with significant lending, collection, and loan  
14 supervision experience and experience in problem loan workouts.

15 E. On February 5, 2021, the Chief Executive Officer (CEO) position at the Bank  
16 became vacant and remained vacant until June 16, 2023. On April 24, 2023, Thomas Meyer  
17 signed an employment agreement to fill the CEO position. The Federal Deposit Insurance  
18 Corporation (FDIC) provided the Bank with a non objection to appointing Thomas Meyer as  
19 CEO on June 15, 2023. On June 16, 2023, the Department of Financial Protection and  
20 Innovation (DFPI) provided its non objection to Thomas Meyer's appointment as CEO of the  
21 Bank.

22 F. On September 17, 2021, the Chief Credit Officer (CCO) position at the Bank  
23 became vacant. The CCO position remains vacant.

24 G. On June 10, 2022, the Chief Financial Officer (CFO) position at the Bank became  
25 vacant. Paul Yang agreed to the Bank's offer of employment as the CFO and began employment  
26 on November 6, 2023. The FDIC and DFPI provided the Bank with non objections to appointing  
27 Paul Yang as CFO of the Bank.  
28

1 H. In the interim, a board Executive Committee, consisting of Tan and two Directors,  
2 (together, the Executive Committee), was formed to manage the executive search as well as to  
3 take over day-to-day management pending retention of a CEO. The board Executive Committee,  
4 formed to take over day-to-day management of the Bank, was dissolved on August 14, 2023.

5 I. The Commissioner finds that the Bank has not been in compliance with the 2020  
6 Consent Order since February 5, 2021 when the last CEO left the Bank, a period of over 2 years.  
7 The Bank has operated for 26 months without a CEO, 22 months without a CCO, and 12 months  
8 without a CFO.

9 J. On July 14, 2023, the Commissioner served the Bank with an Accusation for civil  
10 monetary penalties of \$1.13 million pursuant to Section 329 and for appointment of consultant to  
11 serve as a monitor pursuant to Section 553 (Accusation).

12 K. The Bank disputes the claims and timely requested a hearing on the Accusation  
13 before the Office of Administrative Hearings (OAH). OAH has assigned the Accusation matter  
14 number 2023080149 with the hearing to commence on January 16, 2024.

15 L. The parties intend to enter this Settlement Agreement to resolve this matter for the  
16 purpose of judicial economy and expediency, and without the uncertainty and expense of a  
17 hearing or other litigation. The Bank and its affiliated persons entered into this Settlement  
18 Agreement without admitting or denying the facts and alleged violations set forth herein.

## 19 II.

### 20 **TERMS AND CONDITIONS**

21 1. Civil Monetary Penalty. In consideration of the Commissioner withdrawing the  
22 Accusation and dismissing the hearing on the Accusation in OAH case 2023080149, Respondent  
23 shall pay a civil monetary penalty of \$250,000.00 no later than 30 days after the effective date of  
24 this Settlement Agreement as defined in paragraph 20. The penalty must be made payable in the  
25 form of a cashier's check, wire transfer or Automated Clearing House deposit to the Department  
26 of Financial Protection and Innovation, transmitted to the attention of Accounting –  
27 Litigation, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard,  
28 Sacramento, California 95834. Notice of the payment must be concurrently sent to Paul Yee,

1 Senior Counsel, Department of Financial Protection and Innovation, One Sansome Street, San  
2 Francisco, California 94104-4448.

3 2. Chairman of the Board. Unless approved by the Commissioner in writing,  
4 Chairman of the Board Richard Tan agrees to refrain from participating in day-to-day activities  
5 of running the Bank.

6 3. Full and Final Resolution. This Settlement Agreement constitutes a full and final  
7 resolution for the alleged violations during the time period described in the Accusation. The  
8 Commissioner will not bring any further action or proceeding concerning the alleged violations  
9 referenced in the Accusation, including the Bank's failure to maintain qualified management  
10 prior to the effective date of this Settlement Agreement unless she discovers violations by  
11 Respondent that do not form the basis for this Settlement Agreement, including violations  
12 knowingly concealed from the Commissioner.

13 4. Information Willfully Withheld or Misrepresented. This Settlement Agreement  
14 may be revoked, and the Commissioner may pursue any and all remedies available under law  
15 against the Bank, if the Commissioner discovers that the Bank knowingly or willfully withheld  
16 or misrepresented information used for and relied upon in this Settlement Agreement.

17 5. Future Actions by Commissioner. If the Bank fails to comply with the terms of  
18 the Settlement Agreement, the Commissioner may institute proceedings for any and all  
19 violations otherwise resolved under this Settlement Agreement. The Commissioner reserves the  
20 right to bring any future actions against Respondent for any and all unknown violations of the  
21 FIL. The Bank is not waiving, and is hereby reserving, all defenses to any future proceedings or  
22 actions.

23 6. Assisting Other Agencies. Nothing in this Settlement Agreement limits the  
24 Commissioner's ability to assist any other government agency (city, county, state or federal)  
25 with any prosecution, administrative, civil or criminal action brought by that agency against the  
26 Bank or any other person based on any of the activities alleged in this matter or otherwise.

27 7. No Presumption Against Drafter. Each party acknowledges that it has had the  
28 opportunity to draft, review, and edit the language of this Settlement Agreement. Accordingly,

1 the parties intend no presumption for or against the drafting party will apply in construing any  
2 part of this Settlement Agreement. The parties waive the benefit of Civil Code section 1654 as  
3 amended or corresponding provisions of any successor statute, which provide that in cases of  
4 uncertainty, language of a contract should be interpreted most strongly against the party who  
5 caused the uncertainty to exist.

6 8. Independent Legal Advice. Each of the parties represents, warrants, and agrees  
7 that it has had the opportunity to receive independent advice from an attorney(s) and/or  
8 representatives with respect to the advisability of executing this Settlement Agreement.

9 9. Headings. The headings to the paragraphs of this Settlement Agreement are  
10 inserted for convenience only and will not be deemed a part hereof or affect the construction or  
11 interpretation of the provisions hereof.

12 10. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or  
13 successors in interest.

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

24 12. Waiver, Amendments, and Modifications. No waiver, amendment, or  
25 modification of this Settlement Agreement will be valid or binding unless it is in writing and  
26 signed by each of the parties. The waiver of any provision of this Settlement Agreement will not  
27 be deemed a waiver of any other provision. No waiver by either party of any breach of, or of  
28 compliance with, any condition or provision of this Settlement Agreement by the other party will

1 be considered a waiver of any other condition or provision or of the same condition or provision  
2 at another time.

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

7 14. Counterparts. This Settlement Agreement may be executed in one or more  
8 separate counterparts, each of which when so executed, shall be deemed an original. Such  
9 counterparts shall together constitute a single document.

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

14 16. Voluntary Agreement. The Bank hereby enters into this Settlement Agreement  
15 voluntarily and without coercion and acknowledges that no promises, threats, or assurances have  
16 been made by the Commissioner or any officer, or agent thereof, about this Settlement  
17 Agreement. The parties each represent and acknowledge that he, she or it is executing this  
18 Settlement Agreement completely voluntarily and without any duress or undue influence of any  
19 kind from any source. This Settlement Agreement is a compromise of disputes between the  
20 parties and was made in order to avoid the time, expense, and uncertainty with such a dispute.  
21 The Bank and its affiliated persons enters into this Settlement Agreement without admitting or  
22 denying the facts and alleged violations set forth herein.

23 17. Notice. Any notice required under this Settlement Agreement shall be provided  
24 to each party at the following addresses:

25 To Respondent: Joseph Lynyak, Esq.  
26 Faisal Zubairi, Esq.  
27 Dorsey & Whitney, LLP  
28 600 Anton Blvd., Suite 2000  
Costa Mesa, CA 92626

[Lynyak.Joseph@dorsey.com](mailto:Lynyak.Joseph@dorsey.com)  
[Zubairi.Faisal@dorsey.com](mailto:Zubairi.Faisal@dorsey.com)

To the Commissioner:

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

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

19. Public Record. The Bank hereby acknowledges that the Settlement Agreement is and will be a matter of public record.

20. Effective Date. This Settlement Agreement shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to the Bank at the following email address: [Lynyak.Joseph@dorsey.com](mailto:Lynyak.Joseph@dorsey.com), [Zubairi.Faisal@dorsey.com](mailto:Zubairi.Faisal@dorsey.com).

21. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the obligations set forth herein.

Dated: December 1, 2023

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



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

Dated: December 1, 2023

CALIFORNIA BUSINESS BANK \_\_\_\_\_

By \_\_\_\_\_  
RICHARD TAN  
Chairman of the Board