

**UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.**

In the Matter of
MAI LY-VU,
A former institution-affiliated party of

PACIFIC PREMIER BANK
Irvine, California
A state member bank

Docket Nos. 19-018-E-I
19-018-B-I

ALJ McNeil

**ORDER REGARDING ENFORCEMENT COUNSEL’S MOTION FOR
SUMMARY DISPOSITION**

By a submission dated August 17, 2020, Enforcement Counsel moved for summary disposition of all issues and claims presented in this administrative enforcement action.¹ Accompanying the Motion were 61 exhibits and Enforcement Counsel’s Statement reflecting the facts that Enforcement Counsel aver are uncontested and support a finding that judgment in Enforcement Counsel’s favor is warranted.²

On September 8, 2020, Respondent timely filed a response in opposition to the Motion.³ Accompanying Respondent’s response was her statement identifying facts that Respondent avers are both material and disputed, along with thirteen exhibits.⁴

Summary of Findings

Upon the following premises and determinations, Enforcement Counsel’s Motion is granted in part and denied in part. Pursuant to the Reserve Board’s Uniform Rules of Practice and Procedure,⁵ because Enforcement Counsel is entitled to summary disposition as to certain claims only, I shall defer submitting a recommended decision as to those claims, and direct the parties to address during the hearing now set to begin on December 1, 2020 those claims not determined through summary disposition.

¹ Enforcement Counsel’s Motion for Summary Disposition, dated August 17, 2020.

² Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition, dated August 17, 2020.

³ Respondent’s Opposition to Enforcement Counsel’s Motion for Summary Disposition; Respondent’s Memorandum of Points and Authorities in Opposition to Enforcement Counsel’s Motion for Summary Disposition; Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition; Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition, all dated September 8, 2020.

⁴ Respondent’s Exhibits A through M, filed September 8, 2020.

⁵ See 12 C.F.R. § 263.30.

Through this Order, I find uncontroverted and preponderant evidence establishes that the Federal Reserve Board has jurisdiction over the parties and the subject matter of this enforcement action, as alleged in Paragraphs 1 through 4 of the Notice of Intent.

Further, I find the uncontroverted and preponderant evidence establishes that, with four exceptions, Enforcement Counsel’s presentation of what they assert are uncontroverted facts are sufficiently established in the record to support their summary disposition motion. The four exceptions concern whether Respondent knowingly presented herself as the Chief Financial Officer for ezMed Cloud, Inc., as is reflected in that company’s California Statement of Information filed on January 13, 2016;⁶ whether Respondent was the person who altered ezMed Cloud Inc.’s Modified Loan Application (EC SD Ex. 35);⁷ whether Respondent had acquired such an interest in that company as would have required disclosure to the Bank;⁸ and whether Respondent expected that her husband, Michael Vu, and ezMed would use loan proceeds for her personal benefit.

Respondent’s state of mind regarding the 2016 SOI cannot be determined without determining the credibility of her response to the factual claims presented by Enforcement Counsel, and as such cannot be determined through the summary disposition process. Also, evidence presented through the Motion and Response established a factual controversy regarding Respondent’s role in submitting the Modified Loan Application. Similarly, whether or not Respondent had an interest in ezMed, at least an interest sufficient to give rise to her fiduciary obligations to disclose such interest to the Bank, depends in part on weighing controverted evidence. And there is controverted evidence regarding Respondent’s expectation of how loan proceeds received by Mr. Vu and ezMed would be used.

Finding these four factual questions to be material to the issues and claims raised by the Notice of Intent and Respondent’s Answer thereto, answers to these questions must be determined through the presentation of evidence at the hearing requested by Respondent. In all other respects, the facts set forth below are now determined to be established and uncontroverted. Those facts are no longer subject to challenge and no further evidence will be taken to either support or oppose those factual premises. Those facts will be incorporated in full into the findings of fact that will be presented to the Reserve Board in the Recommended Decision that will be issued following the evidentiary hearing.

Because these determinations significantly affect the scope of the hearing now scheduled for December 1, 2020 – in that the scope of the hearing will be significantly narrower than was the case when the parties filed their Joint Exhibit List and when Enforcement Counsel filed their prehearing statement – a supplemental Order Regarding the Hearing is included in this Order (see below).

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⁶ See Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶63.

⁷ See *id.* at ¶96.

⁸ See *id.* at ¶163.

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Nature of the Charges against Mai Ly-Vu

In the Notice containing the charges against Respondent, the Board of Governors of the Federal Reserve System alleged that as an employee of Pacific Premier Bank, Irvine, California, Respondent both failed to disclose relevant information and made false or misleading statements to the Bank about her personal financial interests when the Bank extended \$250,000 in credit to companies that were either owned by members of her immediate family or for which she was identified as an executive officer.⁹ The Board alleged that from this conduct, Respondent

⁹ Notice of Intent to Prohibit and Notice of Intent to Issue Cease and Desist order Requiring Restitution or Reimbursement Pursuant to Section 8 of the Federal Deposit Insurance Act, as Amended, at 1.

received at least \$18,700, and the Bank suffered a loss of at least \$56,930 or other damage and reputational harm.¹⁰

The Notice alleged that Respondent's conduct involved either her personal dishonesty, or her willful or continuing disregard for the Bank's safety and soundness, or both.¹¹ The Notice also alleged that Respondent repeatedly violated Bank policies through her submission of false or misleading statements regarding the absence of any personal interest she may have had in the Bank's extension of credit, reflecting the reckless nature of her disregard for the safety and soundness of the Bank.¹²

Upon these allegations, the Board has proposed issuing an order that would prohibit Respondent from engaging in regulated banking activity.¹³ Further, the Board has proposed to issue a cease and desist order requiring Respondent to pay to the Bank \$18,700 as restitution for that portion of the Bank's losses by which the Board alleges Respondent was unjustly enriched.¹⁴

Through her Answer, Respondent has denied that she engaged in unsafe or unsound practices, and denied knowingly breaching any fiduciary duty she owed to the Bank.¹⁵ After admitting that she received \$18,700 from her husband, Michael Vu, by company checks from a company operating under the name "ezMed Cloud," Respondent averred this was done in an open way, with no attempt to conceal the transaction.¹⁶ She averred that she was not aware that she had been identified as an executive officer of any of the companies owned by members of her family, denied making any false or misleading statements to the Bank, and denied that she had a personal financial interest in the Bank's extensions of credit to companies owned by members of her family.¹⁷

Through her Answer, Respondent averred that the Bank's financial loss was an outcome that was beyond her control, "for the same reasons that any other wife would not be held responsible for the actions, inactions, business decisions, market downturns or miscalculations of her husband in his separate business dealings."¹⁸ Averring that she lacked the authority to extend credit at the Bank, Respondent averred that she did not act recklessly with regard to the Bank's safety or soundness when she gave applications to the Bank's Processing and Underwriting departments before those applications were forwarded to the Bank's Credit Administration for loan approval.¹⁹ Upon these averments, Respondent objected to the proposed prohibition order, and to the proposed order that would require her to pay \$18,700 in restitution to the Bank.²⁰

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ Respondent's Answer to the Notice of Intent to Prohibit and Notice of Intent to Issue Cease and Desist Order Requiring Restitution or Reimbursement; Response to the Factual Allegations and [*sic*] in Counts 1 and 2, dated November 6, 2019.

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2-3.

Uncontroverted Facts Established through the Notice of Intent and Respondent's Answer

The initial pleadings – the Notice of Intent and Respondent's Answer – establish without controversy that the Board of Governors of the Federal Reserve System is the appropriate federal banking agency to bring charges against institution-affiliated parties of Pacific Premier Bank.²¹ Also established are the factual premises that in December 2014 the Bank hired Respondent as Vice President and Branch Manager of the Bank's branch located in Tustin, California; and that Respondent was employed at the Bank as Branch Service Manager at Pacific Premier Bank, Orange Branch, and then as Premier Deposit Officer at the Bank's Newport Beach Branch.²²

Upon these factual premises, the initial pleadings establish the legal premise that Respondent was an "institution-affiliated party," as that term is defined in section 3(u) and 8(b)(3) of the FDI Act, at 12 U.S.C. §§ 1813(u) and 1818(b)(3).²³ The pleadings also establish that the material period for purposes of the Notice of Intent is January 1, 2015 through January 15, 2018.²⁴

The initial pleadings also establish that in June 2015 Respondent's title at the Bank's branch in Tustin, California was Regional Banking Officer; that it was Regional Banking Manager in October 2015; that it was Branch Service Manager in January 2016; that in April 2016 she was transferred to the Bank's branch in Orange, California; and that in January 2017 she assumed the role of Premier Deposit Officer upon being transferred to the Bank's branch in Newport Beach, California.²⁵

Through her Answer, the initial pleadings establish that as Branch Service Manager, Respondent's duties included overseeing day-to-day branch operations, distributing and implementing Bank policies, and supervising and training branch staff on the Bank system, on opening new accounts, on opening and closing procedures of the branch, and on running daily reports.²⁶

In her Answer, however, Respondent denied having any "knowledge of the Banks [*sic*] internal procedures, actions or policies during the material period of the notice regarding conflicts of interest or potential conflicts of interest."²⁷ Further, based on information and belief, Respondent denied being given a copy of the Bank's Code of Business Conduct, and denied any knowledge of the Bank's requirements regarding full disclosure by all employees of their outside or personal involvement in any project or business activity "that could pose a conflict of interest with their fiduciary duties of care and loyalty to the Bank."²⁸ Further, Respondent denied being aware that she had to get Bank approval if she wanted outside employment.²⁹

The initial pleadings establish without controversy that between June and September 2015, roughly six months after Pacific Premier Bank acquired Independence Bank, Respondent

²¹ *Id.* at ¶1.

²² *Id.* at ¶¶2, 11.

²³ *Id.*

²⁴ *Id.* at ¶3.

²⁵ *Id.* at ¶12.

²⁶ *Id.* at ¶13.

²⁷ *Id.* at ¶5.

²⁸ *Id.* at ¶¶4-9.

²⁹ *Id.* at ¶32.

brought to Pacific Premier Bank applications for the extension of \$150,000 in credit regarding three companies owned by her two brothers-in-law.³⁰

The pleadings establish without controversy that Brother-in-Law A owned Company 1, and although Respondent admitted that she brought an application for the extension of \$100,000 credit to Company 1 (credit that had originated with Independence Bank), she averred that she was not otherwise involved with the processing, underwriting, or approval of this line of credit.³¹

In her Answer, Respondent also averred that she had no personal interest, control, decision making duties, knowledge of the inner workings, or input on the operations of Company 1.³²

Through her Answer, the initial pleadings also establish without controversy that in August 2015 Respondent brought to the Bank an application by Company 2, through which Company 2 obtained a \$25,000 line of credit.³³ Company 2 is a company owned by Respondent's Brother-in-Law B.³⁴ In her Answer, Respondent admitted presenting the application to the Bank, but averred that she was not otherwise involved with the processing, underwriting, or approval of this line of credit.³⁵ The initial pleadings also establish that in June 2016, Respondent brought to the Bank Brother-in-Law B's application for a \$25,000 increase in the line of credit, bringing the total to \$50,000.³⁶ Respondent has averred that she was not otherwise involved with the processing, underwriting, or approval of this line of credit.³⁷

In her Answer, Respondent also averred that she had no personal interest, control, decision making duties, knowledge of the inner workings, or input on the operations of Company 2.³⁸

The initial pleadings also establish without controversy that in September 2015 Respondent brought to the Bank an application by Company 3, through which Company 3 obtained a \$25,000 line of credit.³⁹ Company 3 is another company owned by Respondent's Brother-in-Law B.⁴⁰ In her Answer, Respondent averred that while she brought the application to the Bank, she was not otherwise involved with the processing, underwriting, or approval of this line of credit.⁴¹ The initial pleadings also establish that in June 2016, Respondent brought to the Bank Brother-in-Law B's application for a \$25,000 increase in the line of credit, bringing the total to \$50,000.⁴² Respondent has averred that she was not otherwise involved with the processing, underwriting, or approval of this line of credit.⁴³

³⁰ *Id.* at ¶14.

³¹ *Id.* at ¶15.

³² *Id.* at ¶16.

³³ *Id.* at ¶17.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at ¶18.

³⁹ *Id.* at ¶19.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

In her Answer, Respondent averred that she had no personal interest, control, decision making duties, knowledge of the inner workings, or input on the operations of Company 3.⁴⁴

By her Answer, the initial pleadings establish without controversy that in November 2016 Respondent brought to the Bank an application by Company 4, through which Company 4 sought a \$50,000 line of credit.⁴⁵ The pleadings establish that the line of credit application was approved in December 2016, and that Company 4 was wholly owned by Respondent's husband, Michael Vu.⁴⁶ In her Answer, Respondent denied undertaking those duties described in the Notice as the "relationship manager" for Company 4, and denied otherwise assisting with the underwriting or processing of the application, and denied having "a hand in its approval or disapproval."⁴⁷

Respondent's Responsibilities as a Relationship Manager

Although Respondent in her Answer denied having duties as the Bank's Relationship Manager, she testified in her deposition dated January 29, 2020 that relationship managers were responsible for generating sales – meaning bringing in deposits and making loans – and that although she did not have the title of "Relationship Manager" she performed these duties, by "building a relationship with your existing customers by contacting them, you make sales calls, you go out and visit customers."⁴⁸

During her deposition, Respondent testified thus:

Q Is it fair to say that the relationship managers are considered a point of communication between a customer and other individuals at the bank?

A Yes.

Q As a relationship -- do relationship managers assist with the submission of loan applications?

A Yes.

Q And so what role do they play in that transaction? You can just walk us through it.

A They would obtain the application from the customer and submit it for the customer.

Q Okay. And so where is the application typically submitted at Pacific Premier?

A It usually goes to the -- it could possibly go to their manager, the sales manager, or it just goes directly to the [processing and underwriting] department where the loan is being applied for. If it's a construction loan, it goes to the construction department.⁴⁹

⁴⁴ *Id.* at ¶¶20-21.

⁴⁵ *Id.* at ¶22.

⁴⁶ *Id.* at ¶¶23, 28, 32.

⁴⁷ *Id.* at ¶¶24, 27-28.

⁴⁸ Enforcement Counsel's Summary Disposition Exhibit (EC SD Ex.) 11 (Ly-Vu) at 35.

⁴⁹ EC SD Ex/ 11 (Ly-Vu Deposition) at 36.

Respondent testified that if needed, the underwriters and processors typically rely on relationship managers to communicate with the customer – so if an underwriter or processor had a question or needed additional documents, the questions or requests would be directed to the customer through the relationship manager.⁵⁰ She explained that relationship managers are expected to know their customers – to actually go to the customer’s business site, “just to see the overall business, the site itself, you know, [sic] the business is really there . . . [t]hat they actually have an office there”.⁵¹ When asked whether she acted as a Relationship Manager on Company 4, the ezMed loan application, Respondent testified that yes, she had.⁵² She added, however, that while she obtained the loan application and submitted it to the Bank, and while she discussed the contents of the application with Mr. Vu before doing so, she did not read it.⁵³

In determining the merits of a motion for summary disposition under the Federal Reserve Board’s Uniform Rules of Practice and Procedure, the party responding in opposition to such a motion has the affirmative obligation of referring to the documents and evidence in the record when asserting that a material fact is in dispute. Such opposition “must be supported by evidence of the same type as that submitted with the motion for summary disposition.”⁵⁴ In this context, “conclusory allegations supported by a conclusory affidavit will not suffice to require a trial.”⁵⁵ Under this jurisprudence, a responding party’s affidavit reciting unsupported, conclusory allegations will be insufficient to avoid summary judgment.⁵⁶ Thus, Respondent’s denial in her Answer that she served in a Relationship Manager capacity with respect to the ezMed loan application is insufficient to establish a controverted fact that would require a hearing on the question.

With respect to evidence now in the record presented by Enforcement Counsel regarding Respondent’s role in the ezMed loan application, uncontroverted evidence establishes that she functioned as the applicant’s Relationship Manager. In his Declaration, Bank Senior Vice President, Credit Quality Control Manager Richard Bushman stated that he has worked in commercial and retail banking for more than thirty years, and has a comprehensive understanding and knowledge of commercial loan underwriting and loan analysis, along with an extensive understanding of general banking operations, credit administration practices, portfolio management, and customer relationship management.⁵⁷ Currently, Mr. Bushman conducts second-level reviews of credit approval recommendations to “ensure that the loans recommended for approval comply with the Bank’s credit policies.”⁵⁸

Corroborating Respondent’s own deposition testimony that she served as Relationship Manager for ezMed’s loan application, Mr. Bushman in his Declaration stated that based on his review of Bank records of the ezMed Loan Applications from 2015 through 2017, Respondent “functioned as the Bank’s Relationship Manager” for ezMed.⁵⁹ In his Declaration, Mr. Bushman

⁵⁰ *Id.* at 37.

⁵¹ *Id.* at 37-38.

⁵² *Id.* at 65.

⁵³ *Id.*

⁵⁴ 12 C.F.R. § 263.29(b)(2).

⁵⁵ *Travelers Ins. Co. v. Liljeberg Enterprises, Inc.*, 7 F.3d 1203, 1207 (5th Cir. 1993), quoting *Shaffer v. Williams*, 794 F.2d 1030, 1033 (5th Cir.1986).

⁵⁶ *Travelers Ins. Co.*, 7 F.3d at 1207, citing *Broadway v. Montgomery*, 530 F.2d 657, 660 (5th Cir.1976).

⁵⁷ EC SD Ex. 4 (Bushman Declaration) at ¶1-2.

⁵⁸ *Id.* at ¶6.

⁵⁹ *Id.* at ¶38, citing ezMed Business Summary, FRB-MLV-0005017 (EC SD Ex. 33).

stated he had a detailed understanding of the Bank’s general Credit Policy, that he has assisted the Bank in drafting certain components of the policy related to commercial and small business lending, and has been responsible for ensuring that the Bank’s policies and procedures are understood and followed by the Bank’s lending staff.⁶⁰

Mr. Bushman described the Bank’s “QuickScore” loan program as one that, at least from 2016 to 2018, extended streamlined installment loans and revolving lines of credit to small businesses.⁶¹ Loans procured through the program were processed through a streamlined application process where the applicants typically worked with Relationship Managers or, less frequently, Business Managers, who served as the Bank’s account sales representatives and who prepared the loan applications.⁶² The Relationship Manager was responsible for transmitting the loan to the appropriate underwriting specialist – called Credit Analysts – who would review the application and the applicant’s credit reports, and then prepare a Loan Approval Memorandum to the appropriate Credit Administrator, like Mr. Bushman.⁶³

At Mr. Bushman’s level of review, the Credit Administrator had independent authority to approve QuickScore loans up to the Credit Policy limit, provided there were no policy exceptions and the loan was rated a risk grade of P5 or better.⁶⁴ The Credit Policy took into account the “nature and level” of an applicant’s “business activity,” which, in Mr. Bushman’s experience, generally means that “there must be a reasonable likelihood – with consideration of existing revenues and debts – that an applicant’s revenues will support cash flows sufficient to repay the loan requested.”⁶⁵

Mr. Bushman stated that under these policies, “the Bank must have a good understanding of an applicant’s revenues and debt service obligations to determine whether the requested loan amount is reasonable.”⁶⁶ The policies also required principals owning 20 percent or more of a business applying for a QuickScore loan to personally guarantee the loan.⁶⁷ Because felony convictions “may trigger credibility questions which would factor into the credit determination,” the Bank takes such convictions into account in making loan determinations.⁶⁸

Mr. Bushman declared that the Bank’s Relationship Managers “have an obligation to know their customers and its business operations, to understand the purpose of a loan, and to verify the legitimacy of a business, often by performing a site visit and meeting with its principals and employees.”⁶⁹

Finding that uncontroverted substantial evidence establishes the nature of Respondent’s role regarding ezMed’s loan application, I make the following findings of uncontroverted material facts:

⁶⁰ *Id.* at ¶9.

⁶¹ *Id.* at ¶10.

⁶² *Id.* at ¶13.

⁶³ *Id.*

⁶⁴ *Id.* at ¶15.

⁶⁵ *Id.* at ¶20.

⁶⁶ *Id.*

⁶⁷ *Id.* at ¶21, citing EC SD Ex. 14 (Credit Policy (2016)) at *769.

⁶⁸ *Id.* at ¶22.

⁶⁹ *Id.* at ¶27.

Finding of Fact No. 1: Relationship Managers are sales-focused employees of the Bank who work directly with current and potential bank customers to facilitate their banking needs, such as by opening or modifying deposit or loan accounts.⁷⁰

Finding of Fact No. 2: The Bank relies on Relationship Managers to serve as the primary channel of communication between the Bank and credit applicants.⁷¹

Finding of Fact No. 3: In this role, Relationship Managers collect application materials and credit-related documents, and liaise between the applicant/borrower and Credit Analysts and loan underwriters and processors.⁷²

Finding of Fact No. 4: The Bank's Relationship Managers have a responsibility to know their customer and its business operations, to understand the purpose of a loan, and to verify the legitimacy of a business, often by performing a site visit and meeting with its principals and employees.⁷³

Finding of Fact No. 5: In addition to her primary roles as a Branch Service Manager or Premier Deposit Officer in 2016 and 2017, Respondent interacted with certain customers of the Bank as a Relationship Manager, although she did not formally have a Relationship Manager title. Like "Relationship Managers," "Business Bankers" can also act as the point of contact between the Credit Analyst and current or potential borrowers.⁷⁴

Finding of Fact No. 6: While the qualifications for these positions are different (e.g., Business Bankers are generally junior employees compared to Relationship Managers and often require more supervision and training), the two positions can sometimes be referenced in similar contexts.⁷⁵

Finding of Fact No. 7: During the relevant period, Respondent was the Relationship Manager for Company 4, ezMed Cloud, Inc.

⁷⁰ EC SD Ex. 4 (Bushman Decl.) ¶ 25; EC SD Ex.11 (Ly-Vu Dep. Transcr.) 35:7-10 (acknowledging that relationship managers are responsible for bringing in sales through customer deposits and loans).

⁷¹ EC SD Ex. 4 (Bushman Decl.) ¶ 26; EC SD Ex.11 (Ly-Vu Dep. Transcr.) 36:4-7 (acknowledging that relationship managers serve as "a point of communication between a customer and . . . the bank").

⁷² EC SD Ex. 4 (Bushman Decl.) ¶ 26; EC SD Ex.11 (Ly-Vu Dep. Transcr.) 36:11 – 37:12 (acknowledging that Relationship Managers submit the application and, as needed, communicate with the customer on behalf of underwriters and processors, and relay questions or requests for additional documents).

⁷³ EC SD Ex. 4 (Bushman Decl.) ¶ 27; EC SD Ex.11 (Ly-Vu Dep. Transcr.) 37:18 – 38:6 (Q: "Do relationship managers perform any kind of [site] visits to businesses?" A: "Yes, they go out to see the customer." Q: "And what is the purpose of those visits?" A: "Just to over – just to see the overall business, the site itself, you know, [sic] the business is really there." Q: "[] What else are you looking for . . . when you visit a business?" A: "That they actually have an office there; that there is – if there is [sic] any employees that work there; if there is a desk there; if it's actually a business.").

⁷⁴ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 33:17-21 (Q: "Did you also serve as [a] relationship manager?" A: "Title-wise, no, I did not have a relationship manager title."), 35:7-15 (Q: "So relationship managers were responsible for generating sales, meaning bringing in deposits and making loans?" A: "Bringing in – yes, yes, yes." Q: "Did you ever do those things?" A: "Yes." Q: "Are there any other responsibilities of a relationship manager? A: "No."), 65:8-11 (Q: "[D]id you act as a relationship manager on [the ezMed] loan application – let me rephrase – on that account?" A: "On the loan application? Yes."); EC SD Ex.9 (Ingram Decl.) ¶¶ 31-32. 33.

⁷⁵ EC SD Ex. 4 (Bushman Decl.) ¶ 28.

Respondent's Responsibilities as a Branch Service Manager

Enforcement Counsel aver that during the 2016-2017 period, "the roles and responsibilities of the Branch Service Manager were functionally equivalent to those held by a Branch Manager."⁷⁶ In support of this averment, Enforcement Counsel present the sworn Declaration of Barbara Ingram, Director of Client Services, Pacific Premier Bank.⁷⁷

In her Declaration, Ms. Ingram stated that she has worked in commercial and retail banking for more than 40 years, specializing in general banking operations, client services, and customer relationship management; and has held responsibilities related to the audit and human resources functions.⁷⁸ Ms. Ingram stated that while serving as Regional Operations Manager for the Bank, she directly supervised Respondent from September 16, 2016 to January 3, 2018, who was at that time a Branch Service Manager at a Bank branch in Orange, California.⁷⁹

According to Ms. Ingram, throughout the time Ms. Ingram supervised Respondent, given her duties as a Branch Service Manager, Respondent "was responsible for the operations of the Orange branch. In that role, she supervised branch staff, including customer service representatives and branch tellers."⁸⁰ She stated further that at that time the Branch Service Manager position was the senior-most position at the branch office, and "was functionally equivalent to the typical Branch Manager."⁸¹

Ms. Ingram declared that under the Bank's policies in effect during this period, Branch Service Managers, including Respondent, were responsible for overseeing the general operations and day-to-day transactions of the branch.⁸²

Branch Service Manager duties included:

- a. Supervising and overseeing branch sales, deposits, withdrawals, payments, credits, customer service, and staff management;
- b. Safeguarding the overall operational integrity of the Branch, and ensuring that key functions and management decisions of the branch are conducted within Bank policies and procedures and applicable federal and state banking laws and regulations;
- c. Overseeing and enforcing key operational and risk management controls; and
- d. Implementing and enforcing adequate security controls, such as dual custody, to ensure that negotiable instruments and cash are accounted for appropriately.⁸³

Ms. Ingram further declared that during 2016 and 2017, Branch Service Managers were responsible for conducting or attending, and ensuring that their direct reports attended, all

⁷⁶ Enforcement Counsel's Statement of Undisputed Facts at ¶ 25.

⁷⁷ EC SD Ex. 9 (Declaration of Barbara Ingram).

⁷⁸ *Id.* at ¶ 2.

⁷⁹ *Id.* at ¶¶ 7-8.

⁸⁰ *Id.* at ¶ 9.

⁸¹ *Id.*

⁸² *Id.* at ¶ 10.

⁸³ *Id.* at ¶ 7, citing Branch Service Manager Job Summary (2016), FRB-MLV-0195450 (EC SD Ex.8 to Enforcement Counsel's Motion for Summary Disposition ("MSD")) at *450.

required compliance and Bank policy trainings, adding that the Bank “relied on Branch Service Managers to maintain the operational integrity of its branches, and in so doing, to carry out their duties and responsibilities with honesty, integrity, and professionalism.”⁸⁴

Claims Regarding Respondent’s Personal and Financial Interests in ezMed

The core claims presented by Enforcement Counsel in support of their Motion are that the uncontroverted evidence now in the record in this enforcement action establishes that Respondent held personal and financial interests in ezMed (shown in the Notice of Intent as Company 4); that she helped ezMed obtain a loan; and that ezMed then made payments to Respondent using proceeds from the loan.⁸⁵

Further, Enforcement Counsel claim that during her employment with the Bank, Respondent concealed material information from the Bank by failing to disclose, *inter alia*, that her husband was ezMed’s owner, that she had been identified as ezMed’s Chief Financial Officer, that her husband paid Respondent funds from ezMed’s account for her use in paying household expenses, that she had made loans to ezMed such that it was indebted to her, that she either acquired or claimed an ownership interest in ezMed, that she failed to disclose accurate information – or failed to correct false information – on the ezMed loan application she submitted to the Bank, and that she made false statements to the Bank in certifications she made, as required by the Bank’s Code of Conduct, regarding her conflicts of interest.⁸⁶

Further, Enforcement Counsel claim Respondent participated in transaction that gave rise to conflicts of interest involving other family and friends. These included the claim that Respondent used her position at the Bank to benefit the owner of a company named “en4orm,” helping the owner obtain a \$100,000 revolving line of credit, where the owner was her brother-in-law, without disclosing this relationship to the Bank; that she helped a company named “MLNEM” obtain a \$25,000 (later increased to \$50,000) commercial line of credit, without disclosing that MLNEM’s owner was her brother-in-law; that she helped a company named “Pavescares,” another company owned by that same brother-in-law, obtain from the Bank a \$25,000 (later increased to \$50,000) commercial line of credit, again without disclosing that the owner was her brother-in-law; and that she served as the business banker regarding the Bank’s \$25,000 line of credit to Benedict Law, where its principal, Benedict, was a business partner with Respondent’s husband, without disclosing the relationship to the Bank.⁸⁷

The Role of the Bank’s Employee Handbook and Code of Business Conduct and Ethics

Mr. Bushman also stated that he is familiar with the Bank’s policies that are included in the Employee Handbook and the Code of Business Conduct and Ethics, referred to here as the Bank’s Code of Conduct.⁸⁸ According to Mr. Bushman, since at least December 2015, the Code of Conduct has defined a “conflict of interest” as “an employee[’s] . . . involvement in outside interests, which might either conflict with the[ir] fiduciary duty to the [Bank] or adversely affect

⁸⁴ EC SD Ex. 9 (Declaration of Barbara Ingram) at ¶¶ 11-12, citing Code of Conduct (2015), FRB-MLV-0195467 (Ex. 2 to EC SD) at *472; Code of Conduct (2016-2017), FRB-MLV-0195478 (Ex. 3 to EC SD) at *483.

⁸⁵ Enforcement Counsel’s Motion for Summary Disposition at 10-23.

⁸⁶ *Id.* at 23-34

⁸⁷ *Id.* at 34-36.

⁸⁸ *Id.* at ¶ 29, citing Code of Conduct (2015), FRB-MLV-0195467 (EC SD Ex. 2); Code of Conduct (2016-2017), FRB-MLV-0195478 (EC SD Ex. 3).

the employee[’s] . . . judgment in the performance of his/her responsibilities.”⁸⁹ Conflicts of interest, according to Mr. Bushman, “are prohibited as a matter of [Bank] policy, and, based upon my review of Bank records, have been so since at least 2015.”⁹⁰

In his Declaration, Mr. Bushman identified the following specific provisions of the Bank’s Code of Conduct, all of which he stated have been in place since at least December 2015:

The Code of Conduct has required “[f]ull disclosure by . . . employees of their outside or personal involvement in any project or business activity that could pose a conflict of interest with their fiduciary duties of care and loyalty to the [Bank].”⁹¹

The Code of Conduct requires all Bank employees to notify the Bank’s management or Office of Human Resources of any conflict of interest, including the appearance of any conflict of interest.⁹²

The Code of Conduct further advises: “It is almost always a conflict of interest for a Company employee to work simultaneously for a competitor, customer or supplier, including work as a consultant or board member.”⁹³

“Directors, officers, and employees are responsible for safeguarding the tangible and intangible assets of the Company,” which generally “may not be used for personal benefit [.]”⁹⁴

According to Mr. Bushman, since at least 2015, all Bank employees “are required to complete and sign (either electronically or by hand) a certification acknowledging that they have “read, understand, and agree to comply” with the Code of Conduct.”⁹⁵

Respondent’s Role Regarding the 2016 and 2017 Statements of Personal Interest in Company 4 (ezMed)⁹⁶

In her Answer, Respondent averred that she was not aware of signing or submitting a Statement of Personal Interest in Company 4 in 2016;⁹⁷ denied knowledge of any Statement of Information being filed with the California Secretary of State that identified Respondent as Company 4’s Chief Financial Officer;⁹⁸ denied knowledge of submitting a second Statement of Personal Interest in September 2017 that was nearly identical to the one submitted in 2016,⁹⁹ or of any written representations of any filing made by Michael Vu; and denied that she served as Company 4’s CFO or had any interest, control, decision making, or day-to-day input on Company 4’s operations.¹⁰⁰ Further, Respondent denied the averment that she did not disclose to

⁸⁹ *Id.* at ¶ 30, citing EC SD Ex. 2 (Code of Conduct (2015) at *468.

⁹⁰ *Id.* at ¶ 31, citing EC SD Ex. 2 (Code of Conduct (2015) at *469.

⁹¹ *Id.* at ¶ 32, citing EC SD Ex. 2 (Code of Conduct (2015) at *469.

⁹² *Id.* at ¶ 33, citing EC SD Ex. 2 (Code of Conduct (2015) at *469.

⁹³ *Id.* at ¶ 34, citing EC SD Ex. 2 (Code of Conduct (2015) at *469.

⁹⁴ *Id.* at ¶ 35, citing EC SD Ex. 2 (Code of Conduct (2015) at *469.

⁹⁵ *Id.* at ¶ 36, citing EC SD Ex. 2 (Code of Conduct (2015) at *468.

⁹⁶ Although identified in the Notice of Intent as “Company 4”, in her Answer Respondent disclosed the name of the company as ezMed. See Enforcement Counsel’s Motion for Summary Disposition at n.8.

⁹⁷ Respondent’s Answer at ¶33.

⁹⁸ *Id.* at ¶ 32.

⁹⁹ *Id.* at ¶ 34.

¹⁰⁰ *Id.* at ¶¶ 25-26, 39-40.

the Bank that Michael Vu was her husband and owned Company 4, although the Answer was silent regarding when, to whom, and how such disclosure was made.¹⁰¹

In her Answer, Respondent averred that once a line of credit was approved (as was the case with Company 4 in December 2016), the Bank would add the line of credit to the borrower's online banking, such that at this point, Company 4 was able to advance and make payments directly through the Bank's online banking system, without specific authorization.¹⁰² She denied giving payment authorization to any of Company 4's employees.¹⁰³

In her Answer, Respondent agreed that she received \$18,700,¹⁰⁴ averring however that she was unaware of source of the payments¹⁰⁵ and could not determine if Company 4 was, as is alleged in the Notice, the source of such repayment.¹⁰⁶ She also averred that she was unaware of Company 4's accounting practices or its day-to-day operations,¹⁰⁷ but averred that "the checks were payments to repay loans that Respondent had made to her husband,"¹⁰⁸ and that by this time Respondent "had lent over \$12,000 to her husband from January 21, 2015 through July 29, 2016."¹⁰⁹

Analytical Framework

By seeking relief under that part of the Reserve Board's Rules that provide for summary disposition, Enforcement Counsel were obliged to include in their Motion a "statement of the material facts as to which" they contend "there is no genuine issue", and must support their Motion "by documentary evidence" that supports their Motion.¹¹⁰

The documentary evidence supporting such a motion may take the form of "admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support[s]" their Motion.¹¹¹ The Motion must also be accompanied "by a brief containing the points and authorities in support of the contention of the moving party."¹¹²

Enforcement Counsel's submissions included a Motion with an attached Memorandum of Points and Authorities, accompanied by a separate submission titled: "Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition." In it, Enforcement Counsel set forth in 211 numbered paragraphs a list of factual or legal averments, which are accompanied where appropriate by either citations to exhibits that were supplied with the Motion, or references to legal authorities. When read in conjunction with the Memorandum

¹⁰¹ *Id.* at ¶ 27.

¹⁰² *Id.* at ¶ 29.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at ¶ 30 – by Check #3085 dated 12/20/16 for \$3,000; Check #3090 dated 12/28/16 for \$5,000; Check #3099 dated 2/9/17 for \$1,500; Check #3102 dated 6/1/17 for \$1,100; Check #3132 dated 7/31/17 for \$1,500; Check #3136 dated 9/7/17 for \$1,500; Check #3146 dated 10/16/17 for \$1,500; and Check #3152 dated 11/6/17 for \$1,500.

¹⁰⁵ *Id.* at ¶ 30.

¹⁰⁶ *Id.* at ¶ 31.

¹⁰⁷ *Id.* at ¶ 30.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ 12 C.F.R. § 263.29(b)(2).

¹¹¹ *Id.*

¹¹² *Id.*

of Points and Authorities, these submissions present the claims upon which Enforcement Counsel now seek judgment in their favor.

When responding in opposition to the Motion, Respondent too was required to comply with the Reserve Board's Rules – which provide as follows:

Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.¹¹³

These components make it possible for an analysis that has one primary goal – to ascertain whether there are material facts being controverted that preclude summary disposition. A fact is “material” if it “might affect the outcome of the suit under the governing law”.¹¹⁴ Factual disputes “that are irrelevant or unnecessary will not be counted.”¹¹⁵

The goal is reached only if a clear record is made regarding what has been alleged by Enforcement Counsel and called into controversy by Respondent through her memorandum of points and authorities and her statement identifying those facts averred by Enforcement Counsel that Respondent establishes are both material and in dispute.

Because summary disposition is unavailable if the record includes disputed material facts, the party in opposition must submit a statement setting forth those material facts as to which the party contends a genuine dispute exists – and the party must support that statement with the same type of evidence required of movants, as described above.¹¹⁶

Drawing analogies from jurisprudence pertaining to summary judgment under the Federal Rules of Civil Procedure, we know Enforcement Counsel must present evidentiary support – through references to the record – to every one of the essential elements of each of the claims on which they bear the burden of proof at the hearing.¹¹⁷ (However, the claims upon which Enforcement Counsel bear such burden are those presented in the Notice of Intent – not their Statement of Undisputed Facts.)

Further, at this stage of the enforcement proceeding, this Tribunal must consider the evidence with all reasonable inferences in the light most favorable to *Respondent* for the purposes of Enforcement Counsel's Motion.¹¹⁸ If Enforcement Counsel, through their Statement of Undisputed Facts, make a sufficient showing that there are no material facts being disputed, Respondent must go beyond the pleadings and use affidavits, depositions, or other evidence to establish a genuine issue.¹¹⁹ The mere existence of a scintilla of evidence in support of the non-movant's position is insufficient to defeat a properly supported motion for summary

¹¹³ 12 C.F.R. § 263.29(b)(2).

¹¹⁴ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)

¹¹⁵ *Id.*, citing generally 10A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2725, pp. 93–95 (1983).

¹¹⁶ *Id.*

¹¹⁷ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Krim v. BancTexas Group, Inc.*, 989 F.2d 1435, 1444 (5th Cir.1993).

¹¹⁸ *Webb v. Cardiothoracic Surgery Associates of North Texas*, 139 F.3d 532, 536 (5th Cir.1998).

¹¹⁹ *Id.*

disposition.¹²⁰ Conclusory rebuttals (*i.e.*, those averments not supported by references to the record) made by Respondent in her Answer, in her Declaration, or in those other submissions filed in opposition, are insufficient to avoid summary disposition.¹²¹

In her response in opposition, Respondent may challenge Enforcement Counsel's averments as to undisputed facts and Enforcement Counsel's assertion that the uncontroverted record permits the factual findings asserted by Enforcement Counsel – but such challenge must be based on evidence of the same quality as that required of Enforcement Counsel – specifically, the challenges must be supported by documentary evidence, with citations to the record.¹²²

Applying the foregoing law, to the extent the averments (either those in the Statement of Disputed Facts or Respondent's own affidavit in support of her Memorandum in Opposition) were *conclusory* allegations or *unsubstantiated assertions*, the averments will not preclude granting the relief Enforcement Counsel seeks.¹²³ Also, to the extent the averments presented by Respondent asserted facts not *material* to the issues and claims present in this enforcement action, they too would not preclude a determination on the merits in Enforcement Counsel's favor. To the extent the averments were not supported by documentary evidence, any weight given to the averment must be determined by the record as a whole.

Respondent included four submissions in opposition: (1) a single-paragraph Opposition to Enforcement Counsel's Motion for Summary Disposition, which indicated Respondent's opposition "shall be based upon the Response to the Statement of Undisputed Facts, the Declaration of Mai Ly-Vu, and the associated exhibits as filed with this opposition"; (2) a six-page document titled "Respondent's Memorandum of Points and Authorities in Opposition to Enforcement Counsel's Motion for Summary Disposition," which consisted of a section called "Factual Background," and a single page of a section titled "Argument" and which made references to the record presented in: (3) a document titled "Respondent's Response to the Statement of Undisputed facts in support of Enforcement Counsel's Motion for Summary Disposition; and (4) a 127-page document consisting of Respondent's Exhibits A through M.

The Argument presented by Respondent is that "[a]s can be seen by the foregoing, there are at least 20 facts which are in dispute, and said facts run directly toward the necessary elements of Enforcement Counsel's case."¹²⁴ Through this submission, Respondent controverted twenty factual claims in Enforcement Counsel's Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition, and identified as "Undisputed" the remaining factual claims.¹²⁵ For the purpose of this Motion, therefore, those claims not disputed are considered established through Enforcement Counsel's Motion and Respondent's Response in Opposition. The undisputed claims may or may not be material, but they are not controverted.

¹²⁰ *Anderson*, 477 U.S. at 248, 252.

¹²¹ *Best Buy RV's, Inc. v. Bourget's of the S., L.L.C.*, No. CIV.A. 07-4376, 2008 WL 1835296, at *2 (E.D. La. Apr. 23, 2008), citing *Travelers Ins. Co. v. Liljeberg Enter., Inc.*, 7 F.3d 1203, 1207 (5th Cir.1993).

¹²² 12 C.F.R. § 263.29(b)(2).

¹²³ *Anderson*, 477 U.S. at 248.

¹²⁴ Respondent's Memorandum of Points and Authorities in Opposition to Enforcement Counsel's Motion for Summary Disposition at 5-6.

¹²⁵ Respondent's Response to the Statement of Undisputed facts in support of Enforcement Counsel's Motion for Summary Disposition. Respondent disputed Enforcement Counsel's Facts No. 15, 63, 65, 68, 70, 71, 88-89, 92, 96, 123, 136-38, 142-43, 145, 163, 189, and 192.

For example, Respondent averred the following claim appearing in Enforcement Counsel's submission was disputed:

Enforcement Counsel's Claim No.15 was that "pursuant to the Code of Conduct, any employee involved in the underwriting or processing of a loan application during the relevant period had an ongoing obligation to disclose to the Bank's management or Human Resources office any actual or potential conflict of interest with respect to any customer loan application or other transaction of the Bank. See EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480; Decl. of Richard Bushman (EC SD Ex. 4) ¶ 37.

Respondent's response to this claim was that she "was never in underwriting or processing department. Ly-Vu only submits the loan application."¹²⁶

It should be noted that Enforcement Counsel's Claim No. 15 avers the existence of a *legal* obligation to make a report to the Bank whenever an employee who is subject to the Bank's Code of Conduct and who has been involved in the underwriting or processing of a loan application has a conflict of interest. As such, this paragraph presents a legal claim, not a factual one.

Respondent's response to this legal claim was not to dispute that such a legal obligation arises when conflicts arise; rather, her response calls into controversy whether she was actually involved in the underwriting or processing of a loan application during the relevant period. Her response – that she was "never in underwriting or [the] processing department" but "only submits the loan application" potentially creates a factual dispute.¹²⁷

In support of this averment, Respondent cited her Declaration, where she declared

While employed by Pacific Premier Bank ("PPB") I never worked in the underwriting or processing department. I only submitted the loan applications to the appropriate department. I do not have any approval authority or can influence the outcome of any loans. This is a fact in dispute. (See Separate Statement of Disputed Facts ("SSDF") ¶ 15)¹²⁸

Initially, it must be noted that a non-moving party such as Respondent generally cannot create a factual question solely by offering a self-serving declaration such as the statement in Respondent's Declaration. This Tribunal will not disregard a declaration at the summary judgment stage solely because of its self-serving nature, because "[d]eclarations are oftentimes self-serving, and this is properly so because the party submitting it would use the declaration to support his or her position"¹²⁹ Such a declaration will not, however, always be given substantial weight because "a self-serving declaration does not always create a genuine issue of material fact

¹²⁶ Respondent's Response to the Statement of Undisputed facts in support of Enforcement Counsel's Motion for Summary Disposition. Respondent disputed Enforcement Counsel's Facts at 6, citing Decl. of Ly-Vu ¶ 4.

¹²⁷ Respondent's Response to the Statement of Undisputed facts in support of Enforcement Counsel's Motion for Summary Disposition. Respondent at 6.

¹²⁸ Declaration of Mai Ly-Vu in Support of Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition, at 1, ¶ 4.

¹²⁹ See *Hauschild v. City of Richmond*, No. C 15-01556 WHA, 2017 WL 605057, at *6 (N.D. Cal. Feb. 15, 2017), quoting *Nigro v. Sears, Roebuck and Co.*, 784 F.3d 495, 497 (9th Cir. 2015).

for summary judgment,” and this Tribunal can, in appropriate instances, “disregard a self-serving declaration that states conclusions rather than facts via admissible evidence.”¹³⁰

In this instance, however, the disputed claim is not a *material* one. Respondent avers she never worked in either the Bank’s underwriting or processing departments, and it is true that Enforcement Counsel’s averment claims the obligations described in the preceding paragraphs applied to anyone working in those two departments. The question of whether the obligations imposed under the Bank’s Code of Conduct applies to employees in the underwriting or processing departments is not material here, because those *obligations* – which Respondent does not dispute – applied to *all* employees, including Respondent, even assuming as I do here that she lacked approval authority, did not work in underwriting or processing, and only submitted applications to the appropriate department.

Enforcement Counsel had no obligation under the Notice of Intent to prove Respondent worked in the underwriting or processing department. Instead, the Notice alleged that Respondent, having annually signed certifications affirming that she had read the Bank’s Code of Conduct, breached terms of that Code that applied to *all* “director, officers, and employees”.¹³¹ Respondent averred no fact that called into dispute the allegations in Paragraphs 1 through 14 of Enforcement Counsel’s Statement of Undisputed Facts, and upon this record those facts are deemed established for the purpose of Enforcement Counsel’s Motion. Because no *material* fact is called into question by Respondent’s Response to Paragraph 15’s factual claims, nothing in Respondent’s averments in opposition to Enforcement Counsel’s factual claims in Paragraph 15 would prevent granting summary disposition in Enforcement Counsel’s favor.

Each of the remaining factual disputes identified by Respondent will be addressed, in series, below.

Uncontroverted Facts Established through Enforcement Counsel’s Statement of Undisputed Facts and Respondent’s Response

In her Response to Enforcement Counsel’s Statement of Undisputed Facts, Respondent presented challenges to twenty factual premises presented by Enforcement Counsel. Except as noted in four paragraphs identified below, the following constitute undisputed factual and legal premises, advanced through Enforcement Counsel’s Statement of Undisputed Facts and confirmed by Respondent’s Response to Enforcement Counsel’s Statement of Undisputed Facts. As undisputed facts, these premises are now established in the record, and will not be subject to further argument or the presentation of evidence.

Jurisdiction

1. Respondent Mai Ly-Vu was an employee of Pacific Premier Bank (“PPB” or the “Bank”) from December 2014 until her termination in January 2018.¹³²

2. PPB is, and was at all relevant times, a state member bank.

¹³⁰ See *Hauschild*, 2017 WL 605057, at *6.

¹³¹ Notice of Intent at 3, ¶ 4 and 4 ¶¶ 9-13.

¹³² See Ly-Vu Answer (Nov. 6, 2019) ¶¶ 11, 41; Termination Letter (Jan. 2, 2018), FRB-MLV-0196216 (EC SD Ex.1).

3. The Board of Governors of the Federal Reserve System (the “Board”) is the appropriate Federal Banking Agency to bring charges against institution-affiliated parties of PPB under the FDI Act.¹³³

4. As an employee of PPB during the relevant period, Ly-Vu was an institution-affiliated party of the Bank, as defined in sections 3(u)(1) and 8(b)(3) of the FDI Act, and is therefore subject to the Board’s enforcement jurisdiction under sections 8(e) and 8(b)(3) of the FDI Act.¹³⁴

The PPB Code of Conduct Prohibited Conflicts of Interest

5. During the relevant period (since at least 2015 through 2017), PPB’s Code of Business Conduct and Ethics (the “Code of Conduct”) prohibited conflicts of interest as a matter of Bank policy.¹³⁵

6. During the relevant period, the Code of Conduct defined a “conflict of interest” as “an employee[’s], officer[’s] or director’s involvement in outside interests, which might either conflict with the[ir] fiduciary duty to the [Bank] or adversely affect the employee[’s], officer[’s], or director’s judgment in the performance of his/her responsibilities.”¹³⁶

7. During the relevant period, the Code of Conduct applied to “all officers and employees of the [Bank], and all members of the [Bank’s] Board of Directors.”¹³⁷

8. During the relevant period, the Code of Conduct required “[f]ull disclosure by directors, officers and employees of their outside or personal involvement in any project or business activity that could pose a conflict of interest with their fiduciary duties of care and loyalty to the [Bank].”¹³⁸ Specifically, the Code of Conduct required all employees to notify Bank Management or the Human Resources office of any conflict of interest, or “if they feel that they may have or have the appearance of placing him/herself in a conflict of interest situation.”¹³⁹

9. Upon any such disclosure of a conflict of interest during this period, the Code of Conduct required “[s]pecific consideration by the Board whenever a potential conflict of interest is present in any proposed loan or other transaction or relationship the [Bank] may enter into[.]”¹⁴⁰

10. During the relevant period, the Code of Conduct advised: It is almost always a conflict of interest for a [Bank] employee to work simultaneously for a competitor, customer or supplier, including work as a consultant or board member. The best policy is to avoid any direct or indirect business connection with our customers, suppliers or competitors, except on our behalf.¹⁴¹

¹³³ See 12 U.S.C. §§ 1813(q)(3)(A) & 1818(b)(3).

¹³⁴ See 12 U.S.C. §§ 1813(u), 1818(b)(3), & 1818(e)(3).

¹³⁵ See Code of Conduct (2015), FRB-MLV-0195467, at *469 (EC SD Ex. 2); Code of Conduct (2016-2017), FRB-MLV-0195478, at *480 (EC SD Ex.3).

¹³⁶ EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex.3 (Code of Conduct (2016-2017)) at *479.

¹³⁷ EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex.3 (Code of Conduct (2016-2017)) at *479.

¹³⁸ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex.3 (Code of Conduct (2016-2017)) at *480.

¹³⁹ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

¹⁴⁰ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

¹⁴¹ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

11. The Code of Conduct also advised that the Bank “expects its directors, officers and employees to use good judgment and high ethical standards and to refrain from any form of illegal, dishonest, or unethical conduct.”¹⁴²

12. The Code of Conduct expressed the Bank’s expectations that its employees, officers, and directors “avoid situations in which [their] personal interests conflict, may conflict, or may appear to conflict, with the interest of the [Bank] or its customers.”¹⁴³

13. Furthermore, because “[c]onflicts of interest may not always be clear-cut,” the Bank encouraged employees to “consult with [their] supervisor or higher levels of management.”¹⁴⁴

14. During the relevant period, all Bank employees, officers, and directors were required to complete and sign (either electronically or by hand) an annual certification acknowledging that they have “read, understand, and agree to comply” with the Code of Conduct.¹⁴⁵

15. Enforcement Counsel’s averments regarding employees involved in the underwriting or processing of a loan application, and Respondent’s claim of a material factual dispute regarding this claim, have been addressed above.

16. Although not strictly limited to conflicts of interest, from at least 2015 to 2018, the Code of Conduct also provided: “[d]irectors, officers[,] and employees are responsible for safeguarding the tangible and intangible assets of the [Bank],” and such assets “may not be used for personal benefit[.]”¹⁴⁶

17. The Code of Conduct applied to Ly-Vu during the entire period of her employment by the Bank.¹⁴⁷

18. On or around December 18, 2014, November 29, 2016, and September 5, 2017, Ly-Vu signed annual certifications affirming that she had read, understood, and agreed to comply with the Code of Conduct then operative.¹⁴⁸ Ly-Vu also certified that she had read, understood, and agreed to comply with each version of the Code of Conduct during the relevant period.¹⁴⁹

19. As a Branch Service Manager, Ly-Vu was required to participate in all Bank compliance trainings regarding, and to abide by and enforce, the Code of Conduct.¹⁵⁰

¹⁴² EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *479.

¹⁴³ EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *479.

¹⁴⁴ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

¹⁴⁵ EC SD Ex. 2 (Code of Conduct (2015)) at *468, 475; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *479, 485.

¹⁴⁶ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

¹⁴⁷ See EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *479.

¹⁴⁸ See Personal Interest Statement (2014), FRBMLV-0196180 (EC SD Ex. 5) (“I have read and understand Pacific Premier Bancorp, Incorporated’s Code of Business Conduct and Ethics Policy[.]”); Personal Interest Statement (2016), FRBMLV-0195476 (EC SD Ex. 6) (same); Personal Interest Statement (2017), FRB-MLV-0195486 (EC SD Ex. 7)(same).

¹⁴⁹ See EC SD Ex. 2 (Code of Conduct (2015)) at *475; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *485.5.

¹⁵⁰ See Branch Service Manager Job Summary, FRB-MLV-0195450 (EC SD Ex. 8) at *451; Decl. of Barbara Ingram¶ 29 (EC SD Ex. 9).

Ly-Vu's Positions and Responsibilities

20. In December 2014, PPB hired Ly-Vu as Branch Manager of the Bank's branch in Tustin, California.¹⁵¹

21. In June 2015, Ly-Vu was promoted to Regional Banking Officer, and four months later, in October 2015, was named Regional Banking Manager.¹⁵²

22. In January 2016, Ly-Vu was named Branch Service Manager of the Tustin branch and, in April 2016, she was transferred to the Orange, California, branch, where she held the same position.¹⁵³

23. When the Orange branch closed in January 2017, Ly-Vu was transferred to the Newport Beach, California, branch and assumed the position of Premier Deposit Officer.¹⁵⁴

24. Ly-Vu held the title of "Vice President" in each of her positions at PPB.¹⁵⁵

Branch Service Manager Responsibilities

25. During the 2016-2017 period, the roles and responsibilities of the Branch Service Manager position were functionally equivalent to those held by a Branch Manager.¹⁵⁶ As a Branch Service Manager, Ly-Vu held the senior-most position at the Tustin and Orange branches, and was responsible for overseeing the general operations and day-to-day transactions of those branches.¹⁵⁷ Ly-Vu supervised branch staff, including customer service representatives and branch tellers, and reported directly to the Regional Operations Manager responsible for overseeing branches located in Orange County, California.¹⁵⁸ From October 2016 to January 2018, Ly-Vu reported directly to Barbara Ingram, who was then Regional Operations Manager.¹⁵⁹

26. During the 2016-2017 period, Branch Service Managers held a range of duties and responsibilities, including the following: a) supervising and overseeing branch sales, deposits, withdrawals, payments, credits, and customer service; b) supervising and overseeing branch staff; c) safeguarding the overall operational integrity of the Branch, and ensuring that key functions and branch management decisions are conducted within Bank policies and procedures and applicable federal and state banking laws and regulations; d) overseeing and enforcing key operational and risk management controls; and e) conducting or attending, and ensuring that their direct reports attended, all required compliance and Bank policy trainings.¹⁶⁰

¹⁵¹ See Answer ¶ 11; New Hire Documents, FRB-MLV-0196144 (EC SD Ex. 10) at*145; Ly-Vu Dep. Transcr. Excerpts (Jan. 29, 2020) (EC SD Ex. 11) at 21:15-19.

¹⁵² Answer ¶ 12; Personnel Records, FRB-MLV-0196201 (EC SD Ex. 12) at *205-206.

¹⁵³ Answer ¶ 12; EC SD Ex. 12 (Personnel Records) at *203-204.

¹⁵⁴ Answer ¶ 12; EC SD Ex. 12 (Personnel Records) at *201.

¹⁵⁵ EC SD Ex. 12 (Personnel Records) at *201-206.

¹⁵⁶ See EC SD Ex. 9 (Ingram Decl.) ¶ 9.

¹⁵⁷ Id. ¶¶ 9, 10.

¹⁵⁸ Id. ¶¶ 8-10.

¹⁵⁹ Id. ¶¶ 7, 8.

¹⁶⁰ See EC SD Ex. 8 (Branch Service Manager Job Summary) at *450-451; EC SD Ex. 9 (Ingram Decl.) ¶ 10; EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 31:6-18 (acknowledging responsibility for "day-to-day" branch operations and "making sure [staff] are staying within policies and procedures"); Answer ¶ 13 (admitting that her duties as Branch Service Manager included "overseeing day-to-day branch operations, distributing and implementing Bank policies,

27. During the 2016-2017 period, the Bank relied on Branch Service Managers to maintain the operational integrity of its branches, and, in so doing, to carry out their duties and responsibilities with honesty, integrity, and professionalism.¹⁶¹

Premier Deposit Officer Responsibilities

28. As a Premier Deposit Officer, Ly-Vu was primarily responsible for opening accounts and managing deposits, assisting clients with cash management needs, selling treasury products, and overseeing remote deposit scanning and wire services.¹⁶² The Premier Deposit Officer role is sales-focused; whereas, the Branch Service Manager position is operations-focused.¹⁶³ Ly-Vu, however, viewed her change in title from Branch Service Manager to Premier Deposit Officer as a “lateral move,” as she maintained many of the responsibilities of the Branch Service Manager role, including “assisting relationship managers,” bringing in “sales, loans and deposits,” retaining the clients within my portfolios and the branch’s [portfolio,]” and “assisting operation when needed.”¹⁶⁴

Relationship Manager Responsibilities

29. Relationship Managers are sales-focused employees of the Bank who work directly with current and potential bank customers to facilitate their banking needs, such as by opening or modifying deposit and/or loan accounts.¹⁶⁵

30. The Bank relies on Relationship Managers to serve as the primary channel of communication between the Bank and credit applicants.¹⁶⁶ In this role, Relationship Managers collect application materials and credit-related documents, and liaise between the applicant/borrower and Credit Analysts and loan underwriters and processors.¹⁶⁷

31. Accordingly, Relationship Managers have a responsibility to know their customer and its business operations, to understand the purpose of a loan, and to verify the legitimacy of a business, often by performing a site visit and meeting with its principals and employees.¹⁶⁸

and supervising and training branch staff on the bank system, opening new accounts, opening and closing procedures of branch and running daily reports.”).

¹⁶¹ EC SD Ex. 9 (Ingram Decl.) ¶ 12; see also EC SD Ex. 3 (Code of Conduct (2016-2017)) at *483 (requiring all employees to perform their work “with honesty and integrity”).

¹⁶² EC SD Ex. 9 (Ingram Decl.) ¶ 14; Premier Deposit Officer Description (2016), FRB-MLV-0195453 (EC SD Ex. 13) at *453-54.

¹⁶³ EC SD Ex. 9 (Ingram Decl.) ¶ 14.

¹⁶⁴ EC SD Ex. 11 (Ly-Vu Dep. Transcr.)32:8-19.

¹⁶⁵ EC SD Ex. 4 (Bushman Decl.) ¶ 25; EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 35:7-10 (acknowledging that relationship managers are responsible for bringing in sales through customer deposits and loans).

¹⁶⁶ EC SD Ex. 4 (Bushman Decl.) ¶ 26; EC SD Ex. 11(Ly-Vu Dep. Transcr.) 36:4-7 (acknowledging that relationship managers serve as “a point of communication between a customer and . . . the bank”).

¹⁶⁷ EC SD Ex. 4 (Bushman Decl.) ¶ 26; EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 36:11 – 37:12 (acknowledging that Relationship Managers submit the application and, as needed, communicate with the customer on behalf of underwriters and processors, and relay questions or requests for additional documents).

¹⁶⁸ EC SD Ex. 4 (Bushman Decl.) ¶ 27; EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 37:18 – 38:6 (Q: “Do relationship managers perform any kind of [site] visits to businesses?” A: “Yes, they go out to see the customer.” Q: “And what is the purpose of those visits?” A: “Just to over – just to see the overall business, the site itself, you know, [sic] the business is really there.” Q: “[] What else are you looking for . . . when you visit a business?” A: “That they actually have an office there; that there is – if there is [sic] any employees that work there; if there is a desk there; if it’s actually a business.”).

32. In addition to her primary roles as a Branch Service Manager or Premier Deposit Officer in 2016 and 2017, Ly-Vu interacted with certain customers of the Bank as a Relationship Manager, although she did not formally have a Relationship Manager title.¹⁶⁹

33. Like “Relationship Managers,” “Business Bankers” can also act as the point of contact between the Credit Analyst and current or potential borrowers. While the qualifications for these positions are different (*e.g.*, Business Bankers are generally junior employees compared to Relationship Managers and often require more supervision and training), the two positions can sometimes be referenced in similar contexts.¹⁷⁰

QuickScore Loan Program

34. From at least 2016 to 2018, the Bank offered streamlined installment loans and revolving lines of credit to small businesses through its “QuickScore” loan program.¹⁷¹ The QuickScore program was generally intended to provide small business loans.¹⁷²

35. During that period, standard QuickScore lines of credit ranged from \$25,000 to \$50,000, and typically included a 12-month term.¹⁷³ In the month or so prior to their termination, the loans are reviewed by the Bank, at which time they may be called due, modified, or renewed for another twelve-month term.¹⁷⁴

36. The application process for QuickScore loans was streamlined.¹⁷⁵ Applicants typically worked with a Relationship Manager at the Bank to prepare a written loan application.¹⁷⁶ The Relationship Manager was then responsible for transmitting the loan application to an underwriting specialist—referred to by the Bank as “Credit Analysts”—or to his or her supervisor in the Bank’s Credit Department.¹⁷⁷ The Credit Analyst was then responsible for reviewing the loan application and credit reports of the applicant and its principals, who were required to serve as guarantors of the proposed loan.¹⁷⁸ Upon reviewing the loan application and credit materials, the Credit Analyst would submit a “Loan Approval Memorandum”—a recommendation to approve or reject the loan—to an appropriate Credit Administrator.¹⁷⁹ Credit Administrators were generally responsible for making the final loan approval determination.¹⁸⁰

37. Although the application process was intended to be streamlined, the Bank could still request additional financial or credit-related information beyond the credit report if questions

¹⁶⁹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 33:17-21 (Q: “Did you also serve as [a] relationship manager?” A: “Title-wise, no, I did not have a relationship manager title.”), 35:7-15 (Q: “So relationship managers were responsible for generating sales, meaning bringing in deposits and making loans?” A: “Bringing in – yes, yes, yes.” Q: “Did you ever do those things?” A: “Yes.” Q: “Are there any other responsibilities of a relationship manager? A: “No.”), 65:8-11 (Q: “[D]id you act as a relationship manager on [the ezMed] loan application – let me rephrase – on that account?” A: “On the loan application? Yes.”); EC SD Ex. 9 (Ingram Decl.) ¶¶ 31-32.

¹⁷⁰ EC SD Ex. 4 (Bushman Decl.) ¶ 28.

¹⁷¹ EC SD Ex. 4 (Bushman Decl.) ¶ 10.

¹⁷² *Id.* ¶ 10.

¹⁷³ *Id.* ¶ 12.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* ¶ 13.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

arose regarding the accuracy or completeness of the credit report or the legitimacy of an applicant's business or its principals.¹⁸¹ Relationship Managers typically assisted Credit Analysts in collecting any such additional information from an applicant and its principals and guarantors.¹⁸²

38. Pursuant to the Credit Policy applicable to QuickScore loan products, in 2016, the Bank considered several factors in determining the overall creditworthiness of an applicant, including but not limited to: a) the business applicant's credit score; b) source and volume of revenues; c) years in business (2 years minimum); d) intended use of loan proceeds (working capital, inventory, equipment purchase, debt consolidation, or business acquisition); and e) other derogatory credit information, such as bankruptcies, legal claims, and tax liens or delinquencies.¹⁸³

39. In addition to these criteria, the Credit Policy required that the "nature and level" of an applicant's "business activity must support the loan amount."¹⁸⁴ Accordingly, the Bank required a reasonable likelihood—with consideration of existing revenues and debts—that an applicant's revenues would be sufficient to repay the loan requested.¹⁸⁵

40. To make an informed assessment of an applicant's business activity, the Bank must have a good understanding of business revenues and debt service obligations to determine whether the requested loan amount is reasonable.¹⁸⁶ Although not all QuickScore borrowers were required to provide financial statements, the Bank expected to obtain an understanding of the business's outstanding debts from credit reports of the business and its principals and guarantors.¹⁸⁷

41. The Credit Policy also required principals owning 20 percent or more of a business applying for a QuickScore loan to personally guarantee the loan through a UCC lien against the individual guarantor.¹⁸⁸

42. The credit scores of an applicant and its principals and guarantors were given weight in the approval decision, but were by no means determinative of the Bank's lending decision.¹⁸⁹ To account for such limitations in making the loan approval determination, the Bank took into account other derogatory information that may not have been reflected on a credit report, such as prior delinquencies, bankruptcies, liens, or felony convictions.¹⁹⁰

43. Felony convictions of a principal and guarantor, for example, may trigger credibility questions which would have factored into the Bank's credit determination.¹⁹¹

¹⁸¹ *Id.* ¶ 17.

¹⁸² *Id.*

¹⁸³ *Id.* ¶ 19.11.

¹⁸⁴ Credit Policy (2016), FRBMLV-0195677 (EC SD Ex. 14) at *769; see also EC SD Ex. 4 (Bushman Decl.) ¶ 20.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* ¶ 20.

¹⁸⁷ *Id.* ¶ 20.

¹⁸⁸ *Id.* ¶ 20; see also EC SD Ex. 14 (Credit Policy (2016)), at *769.

¹⁸⁹ EC SD Ex. 4 (Bushman Decl.) at ¶ 22.

¹⁹⁰ *Id.* at ¶ 22.

¹⁹¹ *Id.* at ¶ 22.12.

44. Once the Credit Administrator had rendered a final loan approval determination, the loan application would progress to a loan processor for additional documentation and legal review of the organizational and ownership structure of the applicant.¹⁹²

45. Knowing the identity of the borrower's principals is an important part of the credit application.¹⁹³

ezMed Cloud, Inc.

46. ezMed Cloud, Inc. ("ezMed") is an S-corporation that was incorporated by Michael D. Vu in the State of California on January 6, 2014.¹⁹⁴

47. ezMed is an online marketing directory for residential care facilities for the elderly in California.¹⁹⁵

48. Since at least January 2016, Vu has been a director and executive officer ezMed.¹⁹⁶

49. Vu has served as ezMed's President and Chief Executive Officer since January 2016, and as the company's Secretary since December 2016.¹⁹⁷

50. On December 20, 2000, Vu was convicted of felony aiding and abetting wire fraud in violation of 18 U.S.C. § 1343 and felony aiding and abetting the transportation of stolen property in violation of 18 U.S.C. § 2314.¹⁹⁸ Vu was sentenced to 37 months in prison.¹⁹⁹

Ly-Vu's Personal and Financial Interests in ezMed

Ly-Vu's husband (Vu) held ownership interest in ezMed

51. Ly-Vu and Vu have been legally married since approximately 1996.²⁰⁰

52. Since the date of its incorporation, ezMed has not formally issued any shares of stock or stock certificates.²⁰¹

53. Ly-Vu has testified that Vu is and was during the relevant period the sole owner of ezMed.²⁰² Ly-Vu's brothers-in-law also described ezMed as Vu's company during their depositions.²⁰³ Additionally, in multiple documents he provided to PPB through Ly-Vu during

¹⁹² *Id.* at ¶ 18.

¹⁹³ *Id.* ¶ 23.

¹⁹⁴ See Articles of Incorporation, FRB-MLV-0196000 (EC SD Ex. 15); Michael Vu Dep. Transcr. Excerpts (Jan 29, 2020) (EC SD Ex. 16) at 30:22–31:3.

¹⁹⁵ See Jan. 2016 Statement of Information ("January 2016 SOI"), FRB-MLV-0196047 (EC SD Ex. 17); EC SD Ex. 16 (Vu Dep. Transcr.) at 59:19-22.

¹⁹⁶ See EC SD Ex. 16 (Vu Dep. Transcr.) 21:7-13, 24:24-25:6; EC SD Ex. 17 (January 2016 SOI); Dec.2016 Statement of Information ("December 2016 SOI"), FRB-MLV-0195841 (EC SD Ex. 18); Jan.2020 Statement of Information, FRB-MLV-0199927 (EC SD Ex. 19).

¹⁹⁷ EC SD Ex. 17 (January 2016 SOI); EC SD Ex. 18 (December 2016 SOI); EC SD Ex. 19 (January 2020 SOI).

¹⁹⁸ See Judgment & Commitment, United States v. Vu, 99-cr-20126 (N.D. Cal. Dec. 20. 2000) (following a guilty plea, finding Vu guilty of felony aiding and abetting wire fraud in violation of 18 U.S.C. § 1343); Judgment & Commitment, United States v. Vu, 99-cr-20193 (N.D. Cal. Dec. 20. 2000) (following a jury trial, finding Vu guilty of felony aiding and abetting the transportation of stolen property in violation of 18 U.S.C. § 2314).

¹⁹⁹ *Id.*; EC SD Ex. 16 (Vu Dep. Transcr.) at 77:10-28.

²⁰⁰ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 48:5-8; EC SD Ex. 16 (Vu Dep. Transcr.) 12:25-13:8.

²⁰¹ EC SD Ex. 16 (Vu Dep. Transcr.) 25:7-22.

²⁰² See Answer ¶ 23; EC SD Ex. 11 (Ly-Vu Dep. Transcr) at 47:17-25.

²⁰³ See Justin Enderton Dep. Transcr. Excerpts (Feb. 11, 2020) (EC SD Ex. 20) at 57:2-11; Eddie Guerrero Dep. Transcr. Excerpts (Feb. 11, 2020) (EC SD Ex. 21) at 63:19–64:2.

the loan application process (described in more detail below), Vu represented that he was the sole shareholder of ezMed in 2016.²⁰⁴

54. According to deposition testimony, Vu and Alex Benedict, a friend of Ly-Vu and a friend and business partner of Vu, are and have always been equal partners in ezMed, relying on the Schedule K-1s (IRS Forms 1120S) issued by ezMed as indicative of his share ownership at any given point.²⁰⁵ Vu similarly testified that Benedict owns and has owned a percentage of ezMed, as indicated by the Schedule K-1s ezMed issued to the Law Offices of Alex L. Benedict (“Benedict Law”), to allow Benedict’s law firm to claim ezMed’s losses for tax purposes.²⁰⁶ Vu also testified that he never issued Benedict any shares, but that Vu “consider[s]him as a shareholder” because Vu “gave the loss to him,” although Vu further testified that he could not explain how Benedict was a shareholder of ezMed given that no shares of ezMed were ever issued to Benedict.²⁰⁷

55. For the 2015 tax year, ezMed issued a Schedule K-1 indicating that Vu owned 100% of ezMed during that tax year.²⁰⁸

56. In 2016, 2017, and 2018, however, Vu caused ezMed to issue Schedule K-1s indicating that ezMed was partially owned by individuals who had assisted Vu with the affairs of, or had extended loans to, ezMed, if ezMed had experienced an operating loss that Vu could not utilize in the given tax year.²⁰⁹

57. For example, in January 2016, Vu identified two individuals (a married couple) as directors of ezMed.²¹⁰ Vu testified that he relied on those individuals for their experience with residential care facilities for the elderly.²¹¹ For the 2016 tax year, ezMed issued a Schedule K-1 indicating that Vu owned 90% of ezMed while one of those two individuals owned 10%.²¹² Notwithstanding these K-1s, Vu testified that he would have given these individuals a 10% ownership interest in ezMed had the company become profitable, but that that never occurred.²¹³

58. Benedict incorporated and owns Benedict Law, a professional law corporation incorporated in California and located in the same office building as ezMed.²¹⁴ In November and December 2016, Benedict extended at least three loans totaling \$10,000 to ezMed, using checks from Benedict Law’s account.²¹⁵ Additionally, among other payments, Benedict caused Benedict

²⁰⁴ See Dec. 2, 2016 List of Corp. Officers, Respondent-0000448 (EC SD Ex. 22); Dec. 11, 2016 List of Corp. Officers, FRB-MLV-0195844 (EC SD Ex. 23).

²⁰⁵ See Alex Benedict Dep. Transcr. Excerpts (Feb. 12, 2020) (EC SD Ex. 24) at 16:4-17:22.

²⁰⁶ EC SD Ex. 16 (Vu Dep. Transcr.)19:19–20:6.

²⁰⁷ *Id.* 25:7-22.

²⁰⁸ See Schedule K-1 (2015), ezMed_0001 (EC SD Ex. 25).

²⁰⁹ EC SD Ex. 16 (Vu Dep. Transcr.) at 19:21–20:14 (testifying that if ezMed were to experience an operating loss that Vu could not use, he would “roll it over” to other individuals by purportedly giving them a percentage ownership in the company to allow them to deduct a portion of ezMed’s losses).

²¹⁰ See EC SD Ex. 17 (January 2016 SOI).

²¹¹ EC SD Ex. 16 (Vu Dep.15Transcr.) at 60:14–63:20.

²¹² See Schedule K-1(2016), ezMed_0002 (EC SD Ex. 26).

²¹³ EC SD Ex. 16 (Vu Dep. Transcr.) at 61:1-9.

²¹⁴ See EC SD Ex. 24 (Benedict Dep. Transcr.) at 13:25 – 14:21.

²¹⁵ See Benedict Checks, FRB-MLV-0196002 (EC SD Ex. 27) at *016-018; EC SD Ex. 24 (Benedict Dep. Transcr.) at 102:25 – 108:13.

Law to pay ezMed at least \$9,275 in 2016 and 2017, purportedly in exchange for marketing services.²¹⁶

59. For each of the 2017 and 2018 tax years, Vu caused ezMed to issue a Schedule K-1 indicating that Benedict Law owned 45.95% of ezMed.²¹⁷ Though Vu admits that ezMed never issued shares, he also testified that he had given ezMed's shares to Benedict, allowing him to claim a percentage of ezMed's losses in each year.²¹⁸

60. Similarly, between 2015 and 2017, Ly-Vu extended at least 10 personal loans to ezMed totaling \$12,195.²¹⁹

61. For each of the 2017 and 2018 tax years, Vu caused ezMed to issue Schedule K-1s indicating that Ly-Vu owned 54.05% of ezMed.²²⁰ This allowed Ly-Vu to claim a percentage of ezMed's losses in each year.

62. Accordingly, during the relevant period, and from at least January 2015 through December 2016, ezMed was owned at least in part by Vu, Ly-Vu's husband. Ly Vu, therefore, had a personal interest in ezMed during the relevant period as a result of Vu's ownership interest (in addition to her direct ownership interest in the company, described in detail below).

Controverted Fact #1: Ly-Vu was identified as ezMed's Chief Financial Officer in its public corporate filings

63. Enforcement Counsel averred that on January 13, 2016, "Vu filed the January 2016 SOI with the California Secretary of State. In the filing, Vu identified Ly-Vu as ezMed's Chief Financial Officer at the time."²²¹

In support of this factual claim, Enforcement Counsel has presented a copy of the January 2016 Statement of Information bearing a "Filed" date of January 13, 2016 in the office of the California Secretary of State, for EZMED CLOUD INC. It identified the company as an "online directory," and identified Michael D. Vu as the company's CEO and Mai Ly-Vu as its Chief Financial Officer. It further identified Mr. Vu as the person completing the form.²²²

In her Response, Respondent averred that she "is unaware of any SOI that shows her as the Chief Financial Officer. If my name was on any SOI, it was unknown to me or did I ever agree to [sic]."

In support of her averments, Respondent cited to her Declaration, wherein she declared:

I am unaware of any Statement of Information ("SOI") filed by ezMed or Vu that shows that I am the Chief Financial Officer of this company. If my name

²¹⁶ See EC SD Ex. 27 (Benedict Checks) at *007, 023, 027, 029.

²¹⁷ See Schedule K-1 (2017), ezMED_0004 (EC SD Ex. 28) and Schedule K-1 (2018), ezMed_0006 (EC SD Ex. 29).

²¹⁸ EC SD Ex. 16 (Vu Dep. Transcr.)20:1-22.

²¹⁹ See Loans Ledger, ezMed_0008 (EC SD Ex. 30) ("Deposit" entries dated Jan. 21, 2015, through Nov. 6, 2017, produced by Vu); EC SD Ex. 16 (Vu Dep. Transcr.) 105:20-16107:17 (describing ezMed's records of loans from Ly-Vu); List of Ly-Vu Loans, Respondent-0000478 (EC SD Ex. 31) (list of Ly-Vu's loans to ezMed, produced by Ly-Vu).

²²⁰ EC SD Ex. 28 (Schedule K-1 (2017)) at *005 & EC SD Ex. 29 (Schedule K-1 (2018)) at *007.

²²¹ Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at 16, ¶63, citing EC SD Ex. 17 (January 2016 SOI).

²²² *Id.*

was on any SOI, [i]t was unknown to me or did I ever agreed to. This is a fact in dispute.²²³

Beyond offering what is again a self-serving declaration, Respondent cited to Respondent's Exhibits A, B, and C, accompanying her submissions.²²⁴ Respondent's Summary Disposition Exhibit (Resp. SD Ex.) A is a copy of a Statement of Interest for ezMed dated January 21, 2014. In this SOI, Mr. Vu is identified as the CFO for ezMed Cloud, Inc. and Respondent is not identified at all.²²⁵ Respondent's SD Exhibit B is a copy of the SOI dated January 13, 2016 that had been presented by Enforcement Counsel as their SD Ex. 17 – which *does* identify Respondent as the company's CFO.²²⁶ Respondent's SD Ex. C is a copy of the same company's SOI dated December 11, 2016, which identified Britney Vu as the company's CFO, Mr. Vu as its CEO, and does not identify Respondent at all.²²⁷

Thus, Respondent has not offered facts that contradict the limited factual claim expressed by Enforcement Counsel in Paragraph 63: that she was identified in the first SOI in 2016 as ezMed's CFO. The two exhibits – EC SD Ex. 17 and Resp. SD Ex. B, are the same SOI. I reject as unsupported Respondent's averment that if her name appeared on any year's SOI for ezMed, she was unaware of it – because she has supplied this Tribunal with the SOI showing just that.

What Respondent's response does, however, is call into question whether she was aware that the January 2016 SOI identified her as the company's CFO at the time the SOI was filed. While her present awareness is not part of the factual claim in this Paragraph, her awareness of it at the time it was filed *is* material to the charges appearing in the Notice of Intent.

Paragraph 43 of the Notice of Intent alleges Respondent engaged in unsafe or unsound practices when she failed to disclose her financial interest in an extension of credit to ezMed, which would be a violation of the Bank's Code of Conduct. Further, the Notice alleges Respondent engaged in a breach of fiduciary duties she owed to the bank by “failing to disclose material information regarding her financial interest in Companies 1 – 4 and providing false and/or incomplete information to the Bank regarding her personal interests.”²²⁸

Determining Respondent's state of mind concerning her husband's submission of the January 2016 SOI is an essential element in this administrative enforcement action. Direct evidence of a party's state of mind, however, may not be readily available, given that the state of a person's mind is an internal and subjective matter, one that does not always result in the creation of objective evidence.

Through experience we know multiple factors go into determining the reliability of a party's description of his or her state of mind. Factors that can be considered when evaluating the reliability of a witness's description of his or her state of mind include the consistency of the witness's evidence with what is agreed to have occurred or has been clearly shown by other evidence; the internal consistency of the witness's evidence; the consistency with what the witness has said in depositions on other occasions; the credibility of the witness in relation to

²²³ Declaration of Mai Ly-Vu in Support of Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition, at 2, ¶5.

²²⁴ *Id.*

²²⁵ Resp. SD Ex. A at 2.

²²⁶ Resp. SD Ex. B at 1.

²²⁷ Resp. SD Ex. C at 1.

²²⁸ Notice of Intent at ¶ 44.

matters not germane to the litigation; and, to a lesser extent, the demeanor of the witness. We can also expect the adjudicator to compare such a declarant's averments with contemporaneous evidence that does not depend upon human recollection; to consider inherent believability given the record as a whole; and consideration of the motive a declarant who is a party to the proceedings may have, including the motive to fabricate evidence.

We also know that when such a question arises, summary disposition on the point is not available. While each of the undisputed factual averments will be deemed established facts, the summary disposition process will not permit a determination of Respondent's state of mind with respect to whether, during the relevant time period, she knew she had been identified as Company 4's CFO in the January 2016 SOI. That factual issue must be determined through the presentation of evidence at a hearing. Once heard, that evidence will permit me to apply the above-referenced multiple factors and reach a conclusion regarding Respondent's knowledge of the fact that she had been so identified in January 2016.

64. It was not until December 11, 2016 (when ezMed's loan application was pending with the Bank) that Vu filed the December 2017 SOI [*sic*²²⁹] with the Secretary of State of the State of California, and, in that amendment, removed Ly-Vu as ezMed's Chief Financial Officer and replaced her in that position with Ly-Vu's daughter.²³⁰

65. Enforcement Counsel aver that Respondent "was identified as ezMed's Chief Financial Officer during most of ezMed's loan application process with PPB."²³¹

Respondent averred that she "never worked for ezMed as Chief Financial Officer," supporting the averment with a reference to her Declaration and Respondent's SD Ex. J at page 64. In her Declaration, she stated she never served as ezMed's CFO, and cited Resp. SD Ex. J in support. That exhibit is a copy of Respondent's 2016 U.S. Income Tax Return, which she apparently filed with her husband, Michael Vu.

Respondent does not, however, specify how the return supports her averment. The return identified ezMed Cloud Inc. as a source of nonpassive loss (in the amount of \$32,541), and shows only Mr. Vu as paying self-employment tax, suggesting the venture generated a reportable loss and that Mr. Vu, rather than Respondent, was the taxpayer who sustained the loss.²³² It does not, however, speak to whether or not Respondent was the company's CFO. Without more information provided in support, I found no evidence in Resp. SD Ex. J that supports Respondent's averment that she never worked for ezMed as that company's CFO. Respondent's response to this factual claim does not controvert that she was identified as ezMed's CFO during the relevant time period. Accordingly, Respondent's factual claim regarding Paragraph 65 cannot provide a basis for denying Enforcement Counsel's summary disposition motion.

²²⁹ EC SD Ex. 18 is a State of California Statement of Information regarding ezMed CLOUD INC. filed on December 11, 2016, not 2017.

²³⁰ EC SD Ex. 18 (December 2016 SOI).

²³¹ Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at 16, ¶63, citing EC SD Ex. 17 (January 2016 SOI).

²³² Resp. SD Ex. J at Schedules E and SE.

Vu paid and was expected to continue paying Ly-Vu for household expenses from ezMed's account

66. At all relevant times, Ly-Vu regularly paid for her and Vu's joint household expenses, such as their mortgage, utilities, insurance, internet and phone bill, car payments, and groceries.²³³

67. In 2016 and 2017, Vu made payments, typically monthly, of \$1500 to \$3000 from ezMed to Ly-Vu to cover household expenses, provided that there were sufficient funds in ezMed's account to do so.²³⁴

68. Enforcement Counsel aver that in late 2016 and early 2017, including during the period when ezMed was applying for the QuickScore loan, Ly-Vu expected to continue receiving such payments for household expenses from ezMed or Vu.²³⁵ This claim was supported by excerpts from Respondent's deposition testimony, through which it was established that Mr. Vu had a practice of giving Respondent money and that the source of that money was either ezMed or Mr. Vu.²³⁶

Respondent responded to this averment by stating she "was not expecting regular payments from Vu" and that while checks were "disbursed from Vu sporadically" payments "were not monthly." Respondent supported this averment by citing to her Declaration, in which she stated "I was not expecting regular payments from Michael D. Vu. . . . Checks were disbursed by Vu sporadically. Payments were not monthly. This is a fact in dispute."²³⁷

As previously noted, however, a declaration without support to references in the record will not necessarily create a dispute of such character as to defeat summary disposition. Here the *frequency* of such disbursements by Mr. Vu to Respondent is not material to the claims presented in the Notice of Intent – as those payments could have been made on a regular or irregular basis and still be relevant to the charges. Similarly, Respondent's frame of mind – whether she was or was not *expecting* regular payments or irregular ones does not call into question a material fact. As such, nothing in Respondent's response to the factual claims in Paragraph 68 prevents summary disposition in Enforcement Counsel's favor.

²³³ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 89:19-23; 91:5-19.

²³⁴ EC SD Ex. 16 (Vu Dep. Transcr.) 95:3-4 ("My wife and I have separate financing so I'm responsible for [a] certain portion of the household bills, so I would pay it through the company."); EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 90:21 – 91:4 (Q: "Did you have a practice of receiving checks from ezMed or Michael Vu for purposes of covering household expenses?" A: "Yes, he would give me money for his portion of the expenses, so, you know, he would write me checks from whatever accounts that he's getting the funds from." Q: "And were those checks paid on a monthly basis?" A: "Depending on if he has the funds or not, yes. But usually, yes.").

²³⁵ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 102:1-9 (Ly-Vu testifying that she expected Vu to pay for household expenses on a regular basis), 90:21 – 91:1 (Ly-Vu testifying that she had a practice of receiving payments from Vu or ezMed, depending on the account from which Vu obtained the funds).

²³⁶ *Id.*

²³⁷ Declaration of Mai Ly-Vu in Support of Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition, at 2, ¶7.

ezMed was indebted to Ly-Vu as a result of loans Ly-Vu had made to the company

69. Between January 21, 2015, and November 20, 2017, Ly-Vu made loans to ezMed totaling \$12,195.²³⁸ When ezMed obtained the loan from PPB in December 2016, ezMed owed Ly-Vu at least \$11,420. See EC SD Ex. 31 (Ly-Vu Loans to ezMed).

70. Enforcement Counsel averred that in 2016 and 2017, including during the period when ezMed was applying for the QuickScore loan, Ly-Vu expected ezMed to repay her for the loans she had made to the company.

In support, Enforcement Counsel presented excerpts from Respondent's deposition testimony, including the following questions and answers:

Q: "[I]n making those loans to ezMed did you expect to be repaid?"

A: "When he can pay me back, yes."

Q: "Were you surprised to be repaid in such a large amount, \$5000?"

A: "No"

Q: "Why not?"

A: "I don't question why he's giving me a check for \$5000."

Q: "Were you surprised, like happy that he had \$5,000 to repay you with?"

A: "I was happy that he gave me some of the money, yes."²³⁹

In her Response to the claims in this Paragraph, Respondent again sought to identify a disputed fact by relying on statements in her Declaration – to the effect that she “was surprised that Vu cut a check this large and was not expecting it,” that she had “not expected to be paid from any part of the loan,” and that when she “received this repayment [she] was surprised and happy.”²⁴⁰ There is, however, no reference to evidence in the record to support this averment, nor is there a material fact being disputed by Respondent's Declaration. Further, in her response to the claims in this paragraph, Respondent did not dispute that the evidence now in the record establishes that she acquired a sufficient ownership interest in ezMed to obtain federal and state tax benefits.²⁴¹ As such, nothing in Respondent's response to the factual claims in Paragraph 70 prevents summary disposition in Enforcement Counsel's favor.

Ly-Vu acquired ownership interest in ezMed to obtain federal and state tax benefits

71. Enforcement Counsel averred that documentation Mr. Vu provided to PPB in late 2016 showed that he owned ezMed in its entirety, and Respondent has testified during her deposition that Mr. Vu has always been the sole owner of ezMed.²⁴² Enforcement Counsel aver

²³⁸ EC SD Ex. 31 (Ly-Vu Loans to ezMed); see also Answer ¶ 30; EC SD Ex. 11 (Ly-Vu Dep.18Transcr.) at 87:14 – 88:6 (admitting to the loans and testifying that they involved no written agreement or term of duration, and required no payment of interest).

²³⁹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 87:17-19, 92:15-24.

²⁴⁰ See Decl. of Ly-Vu ¶ 8.

²⁴¹ Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at 33, ¶ 70.

²⁴² Respondent did not dispute the factual claims, found in ¶ 53 above, that Vu is and was during the relevant period the sole owner of ezMed (citing Respondent's Answer at ¶ 23; EC SD Ex. 11 (Ly-Vu Dep. Transcr) at 47:17-25; and that Respondent's brothers-in-law also described ezMed as Vu's company during their depositions, citing Justin

that nevertheless, in 2018, Respondent “claimed that she held an ownership interest in ezMed during the 2017 tax year to reap tax benefits based on ezMed’s losses.”²⁴³

Although this last averment lacked a supporting reference to the record, Respondent did not dispute the claim, averring in response that although she “never claimed that she held any ownership in ezMed,” she and Mr. Vu “filed joint tax return in 2015 and 2016 because of the Affordable Care Act,” adding that the couple did not file 2017 returns jointly,²⁴⁴ “because it was not required. In 2017 ezMed had a loss and Vu could not use the loss, so Vu gave it to [Respondent]” and apparently thereafter they filed their taxes as married filing separately.²⁴⁵ Respondent supported these averments with her Declaration and by offering copies of her tax returns for 2013 through 2018.

The averments and tax returns do not, however, create a material fact in controversy. Respondent through her 2017 tax returns established that she did hold herself out as having a sufficient interest in ezMed to qualify to “use the loss” that her husband could not use.²⁴⁶ Through these documents, Respondent does not contradict the factual averment presented by Enforcement Counsel in this Paragraph, that she “claimed that she held an ownership interest in ezMed during the 2017 tax year to reap tax benefits based on ezMed’s losses.”²⁴⁷ As such, nothing in Respondent’s response to the factual claims in Paragraph 71 prevents summary disposition in Enforcement Counsel’s favor.

72. For the 2017 tax year, ezMed issued Ly-Vu a Schedule K-1 indicating that Ly-Vu was a 54.05% owner of ezMed (the remaining 45.95% was owned by Benedict Law).²⁴⁸

73. The Schedule K-1 ezMed issued to Ly-Vu for the 2017 tax year further indicated that Ly-Vu’s share of ezMed’s ordinary business income for the year was a loss of \$16,460.²⁴⁹

74. In 2018, Ly-Vu, or the individual who prepared the forms on her behalf, completed her Form 1040 U.S. Individual Income Tax Return (“Federal Return”) for the 2017 tax year to file with the Internal Revenue Service (“IRS”).²⁵⁰

Enderton Dep. Transcr. Excerpts (Feb. 11, 2020) (EC SD Ex. 20) at 57:2-11; Eddie Guerrero Dep. Transcr. Excerpts (Feb. 11, 2020) (EC SD Ex. 21) at 63:19–64:2; and citing multiple documents Mr. Vu provided to PPB through Respondent during the loan application process, Mr. Vu represented that he was the sole shareholder of ezMed in 2016. See Dec. 2, 2016 List of Corp. Officers, Respondent-0000448 (EC SD Ex. 22); Dec. 11, 2016 List of Corp. Officers, FRB-MLV-0195844 (EC SD Ex. 23).

²⁴³ Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at 18, ¶71.

²⁴⁴ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at 34, ¶ 71.

²⁴⁵ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at 34, ¶7 1, citing Decl. of Ly-Vu ¶9 and Resp. SD Exhibits “G,” “H,” “I,” “J,” “K,” and “L,”

²⁴⁶ Resp. SD Ex. K (2017 Tax Return) at Schedule E, page 2 showing Income or Loss from Partnerships and S Corporations, identifying ezMed CLOUD INC as an S Corporation, showing \$16,460 as Nonpassive Loss from Schedule K-1, and 2017 California Adjustments – Residents, showing in Section A – Income, \$-16,460 in loss from “Rental real estate, royalties, partnerships, S Corporations, trusts, etc.”.

²⁴⁷ Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at 18, ¶ 71.

²⁴⁸ See EC SD Ex. 28 (Schedule K-1 (2017)) at *005.

²⁴⁹ *Id.*

²⁵⁰ See Ly-Vu’s 2017 Federal and State Tax Filings (“Ly-Vu Tax Filings (2017)”), NGUYEN_0001 (EC SD Ex. 32) at *012-015.

75. The Federal Return for 2017 required Ly-Vu to indicate her filing status.²⁵¹ Ly-Vu, or the individual who prepared the form on her behalf, checked the box next to “Married filing separately” and identified Ly-Vu’s husband as Michael Vu (Item 3).²⁵²

76. The Federal Return for 2017 also required Ly-Vu to identify all income received during the calendar year.²⁵³ In response, Ly-Vu, or the individual who prepared the 2017 Form 1040 on Ly-Vu’s behalf, listed her various sources of income.²⁵⁴ Ly Vu, or the individual who prepared the 2017 Form 1040 on Ly-Vu’s behalf, further identified a nonpassive loss in the amount of \$16,460 on the basis of the K-1 ezMed issued to Ly-Vu for that year (Item 17),²⁵⁵ This deduction reduced Ly-Vu’s federal taxable income for 2017 by \$16,460.²⁵⁶

77. In 2018, Ly-Vu authorized her tax preparer to e-file her 2017 Federal Return on her behalf by signing an IRS e-file Signature Authorization Form 8879.²⁵⁷ On that authorization form, Ly-Vu confirmed her federal adjusted gross income identified on the Federal Return, which included the \$16,460 deduction for ezMed’s losses.²⁵⁸ Ly-Vu signed the authorization form under penalty of perjury, confirming that the information contained in her tax filings was true and correct to the best of her knowledge.²⁵⁹ Thereafter, Ly-Vu’s tax preparer filed Ly-Vu’s Federal Return for 2017 with the IRS.²⁶⁰

78. In 2018, Ly-Vu, or the individual who prepared the forms on her behalf, completed her Form 540 California Resident Income Tax Return (“State Return”) for the relevant tax year to file with the State of California Franchise Tax Board (“FTB”).²⁶¹

79. The State Return for 2017 required Ly-Vu to indicate her filing status.²⁶² Ly-Vu, or the individual who prepared the form on her behalf checked the box next to “Married/RDP filing separately” and identified Ly-Vu’s husband as Michael Vu (Item 3).²⁶³

80. The State Return for 2017 also required Ly-Vu to identify her federal adjusted gross income from her Federal Return (Item 13).²⁶⁴ In response, Ly-Vu, or the individual who prepared the 2017 Form 540 on Ly-Vu’s behalf, listed her federal adjusted gross income from her Federal Return, which included the \$16,460 deduction for ezMed’s operating losses, based on the corresponding Schedule K-1.²⁶⁵ As with her federal taxes, this deduction reduced Ly-Vu’s state taxable income by \$16,460 for 2017.²⁶⁶

²⁵¹ *Id.* at *012.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*; see also *id.* at *015 (Schedule E, reporting Ly-Vu’s nonpassive loss of \$16,460 from her ownership interest in ezMed).

²⁵⁶ *Id.*

²⁵⁷ *Id.* at *001.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.* at *017-023.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.* at *018.

²⁶⁵ *Id.*; see also *id.* at *022 (schedule identifying Ly-Vu’s \$16,460 deduction).

²⁶⁶ *Id.*

81. In 2018, Ly-Vu authorized her tax preparer to e-file her State Return on her behalf by signing a California e-file Signature Authorization for Individuals Form 8879.²⁶⁷ On that authorization form, Ly-Vu confirmed her California adjusted gross income identified on the corresponding State Return, which included the deductions for ezMed's losses.²⁶⁸ Ly-Vu signed the authorization form under penalty of perjury, confirming that the information contained in her tax filings was true and correct to the best of her knowledge.²⁶⁹ Thereafter, Ly-Vu's tax preparer filed Ly-Vu's State Return for 2017 with the FTB, together with the authorization form.²⁷⁰

82. Accordingly, Ly-Vu acquired a majority stake in ezMed during the 2017 calendar year, or at the very least claimed she did, and she relied on that ownership interest to reduce her federal and state taxable income for the 2017 tax year.

Ly-Vu Helped ezMed Obtain a Loan

83. From 2015 to 2017, Ly-Vu served as the Bank's Relationship Manager for ezMed.²⁷¹

84. In February 2015, two months after PPB hired her, Ly-Vu helped ezMed open a commercial deposit account and obtain access to online banking with the Bank by submitting a "Business Summary" memorandum regarding ezMed's business operations to the Bank's BSA Department.²⁷²

85. In that Business Summary memorandum, Ly-Vu represented that ezMed was a legitimate business, explaining that she had performed an on-site visit of ezMed and that ezMed had four employees at the time. *Id.* Ly-Vu further represented that she anticipated the account would have "low volume activities."²⁷³

86. Ly-Vu did not disclose in the Business Summary memorandum that ezMed was owned by her husband, Vu, or that she held any other personal interest in the company.²⁷⁴

87. Ly-Vu testified that she had known to expect "low volume activities" because ezMed "was a new business" and her husband, Vu, had provided this information to her.²⁷⁵ Moreover, Ly-Vu testified that instead of personally verifying that ezMed had four employees, she relied on Vu's representations to that effect, even though she had never seen any other employees at ezMed's offices.²⁷⁶ Further, contrary to her representations in the Business Summary memorandum, Ly-Vu did not perform an on-site visit when ezMed's account was opened.²⁷⁷

88. Enforcement Counsel aver that in November 2016, Ly-Vu recommended to Vu that ezMed take out a small business line of credit with the Bank. Further, they aver that Respondent informed Mr. Vu of the Bank's QuickScore business loan product, for which ezMed could qualify despite the company's low income and lack of an established credit history.

²⁶⁷ *Id.* at *002.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ See EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 65:1-11; EC SD Ex. 9 (Ingram Decl.) ¶¶ 31-32; EC SD Ex. 4 (Bushman Decl.) ¶ 38.

²⁷² See Business Summary, FRB-MLV-0005017 (EC SD Ex. 33).

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 61:24 – 62:10.

²⁷⁶ *Id.* at 62:18 – 63:13.

²⁷⁷ *Id.* at 63:14-24.

In support of these factual claims, Enforcement Counsel refer to these excerpts from Mr. Vu's deposition testimony:

Q Can you walk me through the loan application process that ezMed went through with Pacific Premier?

A My wife sent me the loan application, I completed it and then I emailed it back to them -- or to Pacific Premier Bank. And from there they contacted me for additional information. I can't remember their names, whoever the underwriter was; I gave them the information which they needed. It was based not on the company but on my personal FICA score at the time. And the loan was approved, and that was really the process.

Q And how did you choose that particular loan to apply for?

A That loan was because it was a program that was based not on the income of the business or the asset of the business, but it was supposed to be like a personal -- depending on the personal guarantor's FICA score. And so based on that, I was able to get approved for that loan.

Q Were you aware of that type of loan or did Ms. Ly-Vu tell you about it?

A My wife told me. Mai Ly-Vu told me about the loan program.

Q And Pacific Premier Bank offered that particular loan?

A Pacific Premier Bank offered that loan.²⁷⁸

* * *

Q And how did you choose that particular loan to apply for?

A That loan was because it was a program that was based not on the income of the business or the asset of the business, but it was supposed to be like a personal -- depending on the personal guarantor's FICA score. And so based on that, I was able to get approved for that loan.²⁷⁹

Further, Enforcement Counsel supported the factual claim in this Paragraph by citation to Respondent's own deposition testimony in this excerpt:

Q How did Mr. Vu learn about the Quickscore loan program?

A He asked about our loan programs.

Q And did you discuss your loan programs?

A I gave him the different loan programs that we have, yes.²⁸⁰

In her Response to these claims, Respondent averred that she "never recommended to Vu that ezMed take out a small business line of credit." Instead, she averred that she had "explained

²⁷⁸ EC SD Ex. 16 (Vu Dep. Transcr.) at 43:16 – 44:5.

²⁷⁹ EC SD Ex. 16 (Vu Dep. Transcr.) at 43:16-23.

²⁸⁰ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 65:21 – 66:1.

the varies [*sic*] loan program [*sic*] that the bank had to offer at that time. It was up to Vu to decide which loan was best.”²⁸¹

The distinction being raised by Respondent appears to be that by her interaction with her husband, her conduct did not constitute a *recommendation*, but only served as an explanation of the different loan programs offered by the Bank. The charges against Respondent, however, refer to her conduct in functioning as ezMed’s Relationship Banker, and are not limited to whether or not she made a recommendation. The charges are met upon a sufficient showing that she interacted with Mr. Vu in presenting the application to the Bank – with or without her recommendation. In this context, explaining the Bank’s loan products to Mr. Vu would be conduct of the type alleged in the Notice of Charges.

Respondent again supports this averment by citing to her Declaration, which is not supported by extrinsic evidence or other references to the record. Given that the distinction is not a material one, and given that the averment lacks support in the record, nothing in Respondent’s response to the factual claims in Paragraph 88 prevents summary disposition in Enforcement Counsel’s favor.

89. Enforcement Counsel aver that as ezMed’s Relationship Manager, Respondent assisted with the loan application and underwriting process. They support this averment by reference to the written statement of Mr. Bushman, who stated:

Based on my review of Bank records, as described below, from 2015 to 2017, Mai Ly-Vu functioned as the Bank’s Relationship Manager for a company named ezMed Cloud, Inc. (“ezMed”).²⁸²

In November 2016, Ms. Ly-Vu helped ezMed apply for a QuickScore line of credit from the Bank. On November 28 or 29, 2016, Ms. Ly-Vu submitted ezMed’s loan application to Michael Yushak, a Credit Analyst who specialized in QuickScore loans and, at the time, reported directly to me.²⁸³

They also refer to Respondent’s own deposition testimony, where Respondent testified that she acted as ezMed’s Relationship Manager in connection with the QuickScore application, that she obtained the application from ezMed, and that she submitted it on ezMed’s behalf to the Bank.²⁸⁴

From that deposition, the following exchange was recorded:

Q Is it your understanding that ezMed obtained a loan from Pacific Premier in 2016?

A Yes.

Q What type of loan did it receive?

²⁸¹ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 88, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 10.

²⁸² EC SD Ex. 4 (Bushman Declaration) at ¶ 38, citing ezMed Business Summary, FRB-MLV-0005017 (EC SD Ex. 33).

²⁸³ EC SD Ex. 4 (Bushman Declaration) at ¶ 39, citing ezMed Modified Loan Application, FRB-MLV-0195998 (EC SD Ex. 35)

²⁸⁴ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 65:8-15.

A Quickscore line of credit.

Q And what was the amount of the loan?

A I believe it's 25,000.

Q And did you act as a relationship manager on that loan application -- let me rephrase -- on that account?

A On the loan application? Yes.

Q And so what role did you play in submitting ezMed's application?

A Basically, just obtaining the application and submitting it.

Q Did you review that application?

A No.

Q Did you discuss the Quickscore loans with Mr. Vu before he decided to submit an application?

A The requirement, yes.

Q How did Mr. Vu learn about the Quickscore loan program?

A He asked about our loan program.

Q And did you discuss your loan programs?

A I gave him the different loan programs that we have, yes.

In her Response to these claims, and again citing only to her own Declaration, Respondent averred she “was not involved with any credit, processing, underwriting or loan approval of any PPB loans” but “only submitted the application to the proper department.”²⁸⁵

The distinction being raised by Respondent appears to be that there is a factual question regarding whether or not she “assisted with the loan application and underwriting process.” In denying that she did so, Respondent again supports her averment by citing only to her Declaration, which is not supported by extrinsic evidence or other references to the record.

The Notice of Intent is not dependent upon factual claims that Respondent was working in the Bank’s underwriting process. Instead, the Notice alleges Respondent served as the Bank’s business banker for Companies 1, 2, 3 and 4, without disclosing her familial relationship with the borrowers.²⁸⁶ Given that the distinction is not a material one, and given that the averment lacks support in the record, nothing in Respondent’s response to the factual claims in Paragraph 89 prevents summary disposition in Enforcement Counsel’s favor.

90. To apply for the QuickScore loan, Vu completed a small business loan application on behalf of ezMed.²⁸⁷

²⁸⁵ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 89, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 11.

²⁸⁶ Notice of Intent to Prohibit and Notice of Intent to Issue Cease and Desist order Requiring Restitution or Reimbursement Pursuant to Section 8 of the Federal Deposit Insurance Act, as Amended, at ¶¶ 14-24.

²⁸⁷ See Loan Application, Respondent-0000444 (EC SD Ex. 34).

91. The loan application required Vu to indicate the purpose of the credit request. In response, Vu checked the box next to “Equipment/Purchase.”²⁸⁸

92. Enforcement Counsel aver that the loan application also required Vu to indicate the dollar amount requested. In response, Vu wrote “25,000.” They supported these claims by referring to a copy of the Small Business Loan Application bearing Mr. Vu’s signature as the applicant.²⁸⁹ The document speaks for itself, and does indicate a request in the amount of \$25,000.²⁹⁰

In her Response, Respondent did not dispute the above factual averment, but stated only that after applying for the \$25,000 loan, Mr. Vu “was told by Pacific Premier Bank’s underwriter Michael Yusack that he can apply [for] up to \$50,000 if her [sic] wanted to.”²⁹¹ Again relying on factual claims presented in her Declaration, and without reference to evidence in the record, Respondent averred that the decision to seek \$50,000, rather than \$25,000, “was made by Vu completely.”

Inasmuch as the factual claims presented by Enforcement Counsel in this Paragraph speak only to the assertion that Mr. Vu initially sought \$25,000, and that such claim is not controverted in Respondent’s Response to the averment, nothing in Respondent’s response to the claims in Paragraph 92 establish a material fact in controversy; and as such cannot serve as a bar to granting summary disposition.

93. The loan application further required Vu to disclose whether he had ever been convicted of a felony. In response, Vu checked the box next to “No.”²⁹²

94. In fact, as stated above, Vu had been convicted in December 2000 of felony aiding and abetting wire fraud in violation of 18 U.S.C. § 1343 and felony aiding and abetting the transportation of stolen property in violation of 18 U.S.C. § 2314.

95. On or around November 28, 2016, Vu signed the loan application, thereby certifying “that the Application [was] true, correct, and complete” and that “the proceeds of any credit extended as a result of [the] application will be used solely for business purposes . . . and not for any personal, family, or household use.”²⁹³ Vu then provided the signed loan application to Ly-Vu in her role as ezMed’s Relationship Manager.²⁹⁴

Controverted Fact #2: Ly-Vu altered ezMed’s Loan Application

96. Enforcement Counsel aver that thereafter, Ly-Vu (and not Vu) was the person who forwarded the application to PPB after Vu signed it, and used a pen with a darker ink to check the box next to “Working Capital/Accounts Receivable/Inventory” on the portion of the loan application requiring the applicant to indicate the purpose of the credit request. They supported this averment by referring to the Modified Loan Application (EC SD Ex. 35) and comparing it to

²⁸⁸ *Id.* at *444.

²⁸⁹ See EC SD Ex. 34 at 1.

²⁹⁰ *Id.*

²⁹¹ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 92, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 12.

²⁹² See EC SD Ex. 34 at 1.

²⁹³ See EC SD Ex. 34 (Loan Application) at *445; EC SD Ex. 16 (Vu Dep. Transcr.) 45:12 – 46:18 (Vu testifying that he completed and signed loan application).

²⁹⁴ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 65:12-15.

the original application.²⁹⁵ Enforcement Counsel aver that Respondent also changed the dollar amount requested from “25,000” to “25,000 – 50,000” by adding “– 50,000” in a darker ink. In support of this claim, Enforcement Counsel refer to testimony by both Mr. Vu and Respondent, in their depositions.

During those depositions, Mr. Vu testified that he had “no idea” who changed the application so that what used to read simply “\$25,000” now read “\$25,000 - \$50,000”.²⁹⁶ In her Response, Respondent averred that she “did not make any changes to ezMed’s loan application to PPB,” adding that it was Mr. Vu who “decided to increase the amount after speaking with” the Bank’s loan underwriter, Mr. Yusack.²⁹⁷

Enforcement Counsel aver that Respondent made the changes shown between these two applications, and assert that this is supported first by Mr. Vu’s testimony, shown above, in which he denied making any change and denied knowing who had made the change; and second by reference to Respondent’s deposition testimony. That testimony, however, does not establish that Respondent made the changes.

The relied-upon testimony is as follows:

Q So Ms. Ly-Vu, two portions of this application were revised in darker ink; can you see that? I can point you to it. The dollar amount requested doubled to \$50,000?

A Yes.

Q And the purpose of the credit request changed to add working capital, accounts receivable, and inventory as an alternative purpose; is that correct?

A It's indicating, yes.

Q So changes were made to the application marked Exhibit 9A at some point after Mr. Vu had signed the document; correct?

A I don't know. It looks that way.

Q Do you have an understanding why these changes were made?

A I don't know.

Q Do you know who made the changes?

A Mr. Vu.

Q How do you know that?

A He filled out the application.

Q But you handled the application before turning it over to the bank; correct?

A I submit the application, yes.²⁹⁸

²⁹⁵ Modified Loan Application, FRBMLV-0195998 (EC SD Ex. 35) at *998

²⁹⁶ EC SD Ex. 16 (Vu Dep. Transcr.) at 51:18-25

²⁹⁷ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 96, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 13.

²⁹⁸ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 68-69.

Through this proffer, there appears to be a conflict in the evidence regarding who made the changes to the ezMed loan application. The conflict concerns a fact – Respondent’s alleged role in the loan application process – that is material to the issues and claims in the Notice of Intent. Upon considering this proffer, and considering Respondent’s averment that she did not make these changes, the question cannot be determined through summary disposition, and must be addressed through the presentation of evidence during the hearing.

97. Ly-Vu did not correct Vu’s response indicating that he had not been convicted of any felonies.²⁹⁹

98. On November 28 or 29, 2016, Ly-Vu submitted the Modified Loan Application to Michael Yushak, a Credit Analyst who specialized in QuickScore loans.³⁰⁰

99. From that point onward, as ezMed’s Relationship Manager, Ly-Vu served as the primary point of contact between the Bank and ezMed, and was a gatekeeper for information ezMed provided to the Bank, including the loan application and supporting documentation.³⁰¹

100. When Ly-Vu submitted the Modified Loan Application to Credit Analyst Yushak, Ly-Vu did not disclose to anyone at the Bank that Vu—who owned ezMed—was her husband, or that she had any financial interests in ezMed (described in detail below).³⁰²

101. When Ly-Vu submitted the Modified Loan Application, ezMed’s filings with the California Secretary of State (the January 2016 SOI) still identified Ly-Vu as ezMed’s Chief Financial Officer.³⁰³ Ly-Vu also did not disclose that fact to Bank Management or underwriting staff (including Credit Analyst Yushak) at that time.³⁰⁴

102. On November 30, 2016, Credit Analyst Yushak reviewed the Modified Loan Application and submitted a Loan Approval Memorandum to his superior, Richard Bushman, who then was a Credit Administrator.³⁰⁵

103. Pursuant to the Bank’s Credit Policy, Credit Manager Bushman held independent authority to approve QuickScore loans up to the Credit Policy limit, if (i) there were no policy exceptions related to the loan, and (ii) the loan was rated a risk grade P5 or better.³⁰⁶ Tier 2 approval authority, which necessitated two signatures, was required if the loan involved a policy exception, or if the loan exhibited a risk grade of P6 or worse.³⁰⁷

104. On November 30, 2016, Credit Manager Bushman approved the ezMed loan application.³⁰⁸

²⁹⁹ See EC SD Ex. 35 (Modified Loan Application) at *999.

³⁰⁰ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 69:13 – 70:2; EC SD Ex. 4 (Bushman Decl.) ¶ 39.

³⁰¹ EC SD Ex. 4 (Bushman Decl.) ¶ 40.24

³⁰² Id. ¶¶ 49, 53; Loan Transfer Approval Form, FRB-MLV-0148297 (EC SD Ex. 36).

³⁰³ EC SD Ex. 17 (January 2016 SOI).

³⁰⁴ EC SD Ex. 4 Bushman Decl. ¶¶ 49, 53.

³⁰⁵ See Loan Approval Memo, FRB-MLV-0196040 (EC SD Ex. 37); EC SD Ex. 4 (Bushman Decl.) ¶ 1.

³⁰⁶ See EC SD Ex. 14 (Credit Policy (2016)) at *743; EC SD Ex. 4 (Bushman Decl.) ¶ 15.

³⁰⁷ See EC SD Ex. 14 (Credit Policy (2016)) at *743; EC SD Ex. 4 (Bushman Decl.) ¶ 15.

³⁰⁸ EC SD Ex. 4 (Bushman Decl.) ¶ 45; EC SD Ex. 37 (Loan Approval Memo) at *041.

105. Following Credit Manager Bushman's approval of the loan, the Bank conducted the standard pre-funding legal review of ezMed's corporate structure and status, and cleared a condition related to an outstanding lien against Vu.³⁰⁹

106. On December 9, 2016, the Bank requested additional information from ezMed regarding the identity of its owners, officers, and directors.³¹⁰

107. In response, Vu submitted a form in which he disclosed that, as of December 11, 2016, he was ezMed's sole shareholder and its CEO, President, and Secretary.³¹¹

108. To verify Vu's disclosure, the Bank asked ezMed to provide a Statement of Information filed with the California Secretary of State.³¹²

109. Instead of providing the Bank with the January 2016 SOI (which identified Ly-Vu as ezMed's Chief Financial Officer), which was on file with the California Secretary of State at the time, on December 11, 2016, ezMed filed an amended Statement of Information with the California Secretary of State (the December 2016 SOI).³¹³ The December 2016 SOI removed Ly-Vu as its Chief Financial Officer and replaced her with Ly-Vu's daughter.³¹⁴ On December 13, 2016, Vu forwarded the December 2016 SOI to Ly-Vu who, in turn, sent it to Credit Analyst Yushak in response to the Bank's request.³¹⁵

110. On December 14, 2016, the Loan Agreement between PPB and ezMed became effective and, shortly thereafter, the Bank funded the \$50,000 line of credit.³¹⁶

111. On December 20, 2016, Ly-Vu sent an email to Jonathan Gallardo, a Treasury Management Support Representative, asking whether "the transfer and payment options a returned on" and stating that "Michael [Vu] is not able to transfer from the line."³¹⁷ Gallardo responded: "Please provide your approval to turn on Loan Advances for the client."³¹⁸ Ly-Vu responded: "Approved."³¹⁹

ezMed Made Payments to Ly-Vu with Funds from the Line of Credit

112. Between December 20, 2016, and November 6, 2017, ezMed made at least nine payments totaling \$18,700 to Ly-Vu from ezMed's deposit account at PPB.³²⁰ The memo lines on the checks for those nine payments indicate that the payments were either for "repayment of loan" or payment for "contract work."³²¹

³⁰⁹ EC SD Ex. 4 (Bushman Decl.) ¶ 46.

³¹⁰ See Corporate Entity Checklist, FRB-MLV-0195846 (EC SD Ex. 38); EC SD Ex. 4 (Bushman Decl.) ¶¶ 47-48.

³¹¹ See EC SD Ex. 23 (Dec. 11 Corporate Officers List); EC SD Ex. 4 (Bushman Decl.) ¶ 47.

³¹² EC SD Ex. 4 (Bushman Decl.) ¶ 48; see Dec. 13, 2016 email chain, FRB-MLV-0003061 (EC SD Ex. 39) at *061.

³¹³ *Id.* at *063.

³¹⁴ *Id.*

³¹⁵ See *id.* at *061.

³¹⁶ See Loan Agreement, FRB-MLV-0195826 (EC SD Ex. 40).

³¹⁷ Dec. 20, 2016 Gallardo Email, FRB-MLV-0196240 (EC SD Ex. 41).

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ See Answer ¶ 30 (admitting receipt of \$18,700 in payments from ezMed); ezMed Checks (2016-2017), FRBMLV-0192993 (EC SD Ex. 42); ezMed Account Statements (2016-2017), FRB-MLV-0192991 (EC SD Ex. 43); EC SD Ex. 16 (Vu Dep. Transcr.) 134:12 – 136:4 (admitting that ezMed would not have had sufficient funds in its possession to make payments to Ly-Vu had the company not drawn on the line of credit).

³²¹ EC SD Ex. 42 at *2960, *3007-08, *3017, *3001, *3035, *3030, *3026.

Payment 1: \$3,000 payment to Ly-Vu for household expenses

113. As of the effective date of the ezMed Loan Agreement, more than 90 days had passed since Ly-Vu had last received any payment from ezMed—a \$1500 check for “contract work”—in early September 2016.³²² During that interim period, the average balance on ezMed’s deposit account at PPB had not risen above \$2,200.³²³

114. On December 20, 2016, the day on which Ly-Vu provided her approval to “turn on” advances from the line of credit but before ezMed had electronic access to the loan funds, ezMed issued a check for \$3,000 from its deposit account to Ly-Vu.³²⁴ The memo line of the check describes the payment as for “Contract work: Nov & Dec 2016.”³²⁵ At the time, there were insufficient funds in ezMed’s deposit account (\$1,294) to clear the check.³²⁶ On December 21, 2016, ezMed transferred \$20,000 from the line of credit to its deposit account.³²⁷ On the same day, Ly-Vu deposited the \$3,000 check to her checking account.³²⁸

115. Ly-Vu did not perform contract work for ezMed in November or December of 2016 despite the check description; rather, Ly-Vu testified that ezMed made this payment to her to cover her and Vu’s joint household expenses.³²⁹

Payment 2: \$5,000 payment to Ly-Vu in repayment of loan

116. On December 28, 2016, ezMed issued a check for \$5,000 from its deposit account to Ly-Vu.³³⁰ The memo line of the check describes the payment as for “Repayment of Loan.”³³¹ At the time, the balance of ezMed’s deposit account was \$1,205, and there were insufficient funds to clear the check.³³²

117. On December 29, 2016, ezMed transferred \$9,500 from the line of credit to its deposit account.³³³ On the following day, Ly-Vu deposited the check in her checking account.³³⁴

118. Ly-Vu testified that ezMed issued her this check in repayment of loans she had made to Vu “[t]hroughout [their] marriage.”³³⁵

119. Ly-Vu testified that she was not surprised to receive such a large repayment only two weeks after the ezMed line of credit was funded—in fact, she was “happy that he [Vu] gave [her] some of the money.”³³⁶

³²² EC SD Ex. 43 (Account Statements) at *992 (Check no. 3054).

³²³ *Id.* at *988, 984, 955.

³²⁴ EC SD Ex. 42 (ezMed Checks), at *2960 (check no. 3085).

³²⁵ *Id.*

³²⁶ EC SD Ex. 43 (Account Statements) at *2957.

³²⁷ *Id.* at *2956.

³²⁸ EC SD Ex. 42 (ezMed Checks) at *2960; Check Deposit Summary, FRB-MLV-0195577 (EC SD Ex. 44).

³²⁹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 88:7-17.

³³⁰ EC SD Ex. 42 (ezMed Checks) at *2960 (check no. 3090).

³³¹ *Id.*

³³² EC SD Ex. 43 (Account Statements) at *2957.

³³³ *Id.* at *2956.

³³⁴ EC SD Ex. 42 (ezMed Checks) at *2960; EC SD Ex. 44 (Check Deposit Summary).

³³⁵ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 92:6-14.28.

³³⁶ *Id.* at 92:15-24.

Payment 3: \$1,500 payment to Ly-Vu for household expenses

120. On February 9, 2017, ezMed issued a check for \$1,500 from its deposit account to Ly-Vu.³³⁷

121. The memo line of the check to Ly-Vu describes this payment as for “Contract Work.” *Id.* On February 14, 2017, Ly-Vu deposited the check in her checking account.³³⁸

122. Two days earlier, on February 7, 2017, ezMed transferred \$14,000 from the line of credit to its deposit account.³³⁹ Before doing so, the balance of ezMed’s deposit account was \$411, and there were insufficient funds to clear the check to Ly-Vu.³⁴⁰

123. Enforcement Counsel averred that Ly-Vu did not perform contract work for ezMed despite the check description; rather, Ly-Vu and Vu have testified that ezMed made this payment to her to cover Ly-Vu’s and Vu’s joint household expenses.³⁴¹

In her Response, Respondent concurred with the premise that she did not perform contract work for ezMed, stating that she had “not been involved with ezMed or Vu’s business operation and decision making,” and that she had “no knowledge on how he handles his accounting.”³⁴²

Although in her Declaration Respondent asserts that the facts presented in Paragraph 123 are in dispute, this assertion is without merit. Respondent has not called into controversy the factual claims presented in this Paragraph. After concurring with the premise that she was not involved with the operations of ezMed, she supplemented her answer by adding that she lacked knowledge of how the business was operated, saying nothing with respect to the claim that both she and Mr. Vu testified that the check referred to in this Paragraph falsely attributed the payment to contract work but was instead paid to cover the couple’s joint household expenses. Nothing in this Response presented a material fact in controversy, and as such the Response does not constitute a basis for denying summary disposition.

Payment 4: \$2,000 payment to Ly-Vu for household expenses (and additional activity on ezMed’s line of credit).

124. On February 17, 2017, ezMed issued a check for \$2,000 to Ly-Vu and checks to other entities totaling \$3,549.³⁴³ The memo line of the check to Ly-Vu describes the payment as for “Contract Work.”³⁴⁴

125. On the same day, ezMed transferred \$6,000 from the line of credit to its deposit account.³⁴⁵ At the time, ezMed’s deposit account balance was \$2,350, and absent the transfer

³³⁷ EC SD Ex. 42 (ezMed Checks) at *3007 (check no. 3099).

³³⁸ *Id.*; EC SD Ex. 44 (Check Deposit Summary).

³³⁹ EC SD Ex. 43 (Account Statements) at *3005.

³⁴⁰ EC SD Ex. 42 (ezMed Checks) at *3007.

³⁴¹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 96:3-8 (denying having performed any contract work for ezMed, and noting that this payment was allocated to household expenses); EC SD Ex. 16 (Vu Dep. Transcr.) at 100:2-4 (noting that the payment most likely would have been for household bills).

³⁴² Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 123, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 14.

³⁴³ EC SD Ex. 42 (ezMed Checks) at *3008 (check no. 3102).

³⁴⁴ *Id.*

³⁴⁵ EC SD Ex. 43 (Account Statements) at *3005.

would have had insufficient funds to clear all of the checks issued that day.³⁴⁶ On February 21, 2017, Ly-Vu deposited the check in her checking account.³⁴⁷

126. Ly-Vu did not perform contract work for ezMed in connection with this specific payment; rather, Ly-Vu testified that ezMed made this payment to her to cover her and Vu's joint household expenses.³⁴⁸

127. At that point, because the ezMed line of credit had been fully advanced, ezMed stopped making payments to Ly-Vu for a period of three months.³⁴⁹

128. On February 13, 2017, when ezMed had almost fully exhausted the line of credit and would thus continue to have very low levels of deposits, Ly-Vu logged into the Bank's account management system and placed a waiver on the minimum balance requirements applicable to ezMed's deposit account.³⁵⁰ This permitted ezMed's account to hover below \$750 on average during the months of March and April without incurring a penalty.³⁵¹ Although Ly-Vu would have had authority to waive minimum balance requirements applicable to third parties, she would not have been permitted to waive such requirements with respect to the account of an immediate family member or a business owned by an immediate family member.³⁵²

129. On June 7, 2017, Ly-Vu's daughter made a \$5,000 payment towards the principal balance of the ezMed loan.³⁵³ Throughout the entire term of the loan, ezMed made only two payments totaling \$215 towards principal.³⁵⁴ Around this time, and through November 2017, ezMed resumed making payments to Ly-Vu. Vu testified that he was ezMed's only fulltime employee, with the one exception that ezMed hired his and Ly-Vu's daughter as an intern "to show her how to do the books."³⁵⁵ Ly-Vu's daughter regularly received compensation of approximately \$600 every two weeks from ezMed, but visited the office "only when [Vu] needed her," and her employment at most was "on and off."³⁵⁶

Payment 5: \$1,200 payment to Ly-Vu for household expenses

130. On or around June 1, 2017, ezMed issued a check for \$1,200 from the deposit account to Ly-Vu.³⁵⁷ The memo line of the check describes the payment as for "Contract Work." Id. On or around June 5, 2017, Ly-Vu deposited the check in her checking account. See Id.; EC SD Ex. 44 (Check Deposit Summary). In June 2017, ezMed subsequently took three advances totaling \$4,500 from the line of credit to its deposit account. EC SD Ex. 43 (Account Statements) at *3015-3016 (transfers from loan on June 8, 19, and 29). With an average balance of less than \$1,200 during the month of June, absent the three advances from the line of credit, ezMed could not have funded its June withdrawals, including its payment to Ly-Vu and more

³⁴⁶ *Id.* at *3006.

³⁴⁷ EC SD Ex. 42 (ezMed Checks) at *3008; EC SD Ex. 44 (Check Deposit Summary).

³⁴⁸ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 96:9-21 (Q: "Why did ezMed make this payment to you?" A: "Again, this is for our household expenses. It's [a] contribution to the household.").

³⁴⁹ See EC SD Ex. 43 (ezMed Account Statements).

³⁵⁰ See ezMed Account Information, FRB-MLV-0195822 (EC SD Ex. 45).

³⁵¹ See EC SD Ex. 43 (ezMed Account Statements) at *3019, 2995.

³⁵² Decl. of Terri Benkey (EC SD Ex. 56) ¶ 11.30

³⁵³ See Daughter Payment, FRB-MLV-0196086 (EC SD Ex. 46).

³⁵⁴ See ezMed Loan History, FRB-MLV-0195509 (EC SD Ex. 47).

³⁵⁵ EC SD Ex. 16 (Vu Dep. Transcr.) 28:24 – 29:13.

³⁵⁶ *Id.* 29:9 – 30:5; see also, e.g., Daughter Account Statements, JPMC_00290 (EC SD Ex. 48) at *293.

³⁵⁷ EC SD Ex. 42 (ezMed Checks) at *3017 (check no. 3120).

than \$1,700 in payments to Ly-Vu's daughter and Vu. See *Id.* at *3015, 3017; EC SD Ex. 48 (Daughter account statements) at *372-375.

131. Ly-Vu did not perform contract work for ezMed in connection with this specific payment; Ly-Vu testified that ezMed made this payment to her to cover her and Vu's joint household expenses. EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 97:11-23 (noting that the check was for "household expenses").

Payments 6-9: \$6,000 in payments to Ly-Vu for household expenses

132. On each of July 31, September 7, October 16, and November 6, 2017, ezMed issued a check for \$1,500 from its deposit account to Ly-Vu, totaling \$6,000 in payments to her.³⁵⁸ The memo line of each check describes the payment as for "Contract work."³⁵⁹ Ly-Vu deposited each check in her checking account within a few days of receipt.³⁶⁰ ezMed relied on proceeds from the line of credit to make each of the foregoing payments to Ly-Vu.³⁶¹

133. Ly-Vu did not perform contract work for ezMed in connection with any of these four payments; rather, Ly-Vu and Vu testified that ezMed made these payments to her to cover her and Vu's joint household expenses.³⁶² Ly-Vu acknowledges that the payments she received from ezMed for household expenses were unrelated to the company's business.³⁶³

134. From December 2016 to December 2017, ezMed relied on the line of credit to make over 20 payments totaling \$15,463 to Ly-Vu's daughter.³⁶⁴ During that period, Ly Vu's daughter deposited a portion of many (roughly half) of the checks into a checking account she held jointly with Ly-Vu.³⁶⁵

135. As reflected by ezMed's loan and deposit account statements, including Bank business records reflecting draws from the line of credit, monthly balances of ezMed's deposit account, and checks issued therefrom, ezMed relied on proceeds from the line of credit to fund at least nine payments totaling approximately \$18,700 to Ms. Ly-Vu between December 20, 2016, and November 6, 2017, and absent its draws on the line of credit, would not have had sufficient cash reserves to make such payments to Ly-Vu.³⁶⁶

Ly-Vu Concealed Material Information from the Bank

136. Enforcement Counsel averred that as ezMed's Relationship Manager, Ly-Vu served as the Bank's primary point of contact with the company. Further, Enforcement Counsel averred that in this role, Ly-Vu influenced the loan application and credit analysis processes by shaping or filtering the information Vu provided to the Bank's Credit Analyst for ezMed. In support of

³⁵⁸ EC SD Ex. 42 (ezMed Checks) at *3001 (check no. 3132), *3035 (check no. 3136), *3030 (check no. 3146), and *3026 (check no. 3152).

³⁵⁹ *Id.*

³⁶⁰ See *Id.*; EC SD Ex. 44 (Check Deposit Summary).

³⁶¹ See EC SD Ex. 16 (Vu Dep. Transcr.) 134:12– 136:4.

³⁶² EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 99:3-8; EC SD Ex. 16 (Vu Dep. Transcr.) at 102:2–104:10 (Vu testifying that his labeling of the ezMed payments as for contract work was incorrect, and that Ly-Vu did not perform any work for ezMed).

³⁶³ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 90:5-7.

³⁶⁴ See EC SD Ex. 43 (Account Statements); EC SD Ex. 42 (ezMed Checks).

³⁶⁵ See EC SD Ex. 48 (Daughter Account Statements).

³⁶⁶ See EC SD Ex. 4 (Bushman Decl.) ¶ 55; EC SD Ex. 43 (Account Statements); Oct. 31, 2017 Sheldon Email, FRB-MLV-0150648 (EC SD Ex. 49) (Lu-Vu explaining that ezMed "doesn't have high volume activities").

this averment, Enforcement Counsel presented portions of the Declaration submitted by Mr. Bushman. The excerpted portions state as follows:

As the Relationship Manager for ezMed, Ms. Ly-Vu served as the Bank’s primary point of contact with ezMed. In this role, Ms. Ly-Vu influenced the loan application and credit analysis processes by shaping or filtering the information Mr. Vu provided to the Bank’s Credit Analyst for ezMed.³⁶⁷

Further, Mr. Bushman declared that while acting as the Bank’s Relationship Manager for ezMed, Respondent “influenced the Bank’s collection of credit-related information,”³⁶⁸ that she had “an obligation to report her personal interest in the line of credit to [Mr. Bushman] or other Bank management,”³⁶⁹ that she had an obligation “to disclose the true purpose of the credit request,”³⁷⁰ and an obligation to disclose Mr. Vu’s felony conviction.³⁷¹

Respondent responded to these factual claims by asserting, again with no citation to evidence in the record beyond her unsupported Declaration, that because she was “not involved with any credit, processing, underwriting or the approval process of any loan,” she had “no influence on the approval or denial of any loan application” after she submitted such application as given by any customer.³⁷²

Although Respondent avers this creates a fact in dispute,³⁷³ the response to this Paragraph does not call into controversy her role in the loan application process – as the Relationship Manager responsible for serving as the contact between the Bank and the borrower. The Notice of Intent reflects charges that are not dependent on a finding that Respondent approved or denied the ezMed loan application – only that she was the banker responsible for submitting the application, where such responsibility included the obligations as described by Mr. Bushman.

As the response to this Paragraph does not call into controversy any material fact, nothing in this response will preclude summary disposition.

137. Enforcement Counsel averred that the Bank’s Relationship Managers have the ability to influence the lending decision, as the Bank relies on Relationship Managers to provide accurate information in making lending decisions. Further, they averred that in making lending decisions, every choice – including what information to pass along to the Bank as part of a loan application – must be made by someone who is objective and has no financial interest in the transaction. They asserted that the evidence (in the form of Mr. Bushman’s Declaration) established that if the Bank does not receive the correct (i.e., neutral, objective, factually correct, unfiltered) inputs, then the Bank’s outputs (its analyses and decisions) will be skewed.

In support, they presented Mr. Bushman’s Declaration as follows:

³⁶⁷ EC SD Ex. 4 (Bushman Decl.) ¶¶ 51, 56-81

³⁶⁸ *Id.* at ¶ 58.

³⁶⁹ *Id.* at ¶ 79.

³⁷⁰ *Id.* at ¶ 80.

³⁷¹ *Id.* at ¶ 81.

³⁷² Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 136, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 15.

³⁷³ Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 15.

As a former Relationship Manager, and as a Credit Administrator who relies in material part on Relationship Managers' furnishing accurate information needed to make lending decisions, it is my experience that information furnished by Relationship Managers is frequently used in making the lending decision. To make a lending decision, every choice—including what information to pass along to the Bank as part of a loan application—must be made by someone who is objective and has no financial interest in the transaction. That is because, if the Bank does not receive the correct (i.e., neutral, objective, factually correct, unfiltered) inputs, then the Bank's outputs (i.e., its analyses and decisions) will be skewed.³⁷⁴

Responding to these averments, Respondent – apparently acknowledging her role as Relationship Manager – averred that “[a]ll approval process is done by PPB’s credit analysis, processing department, underwriting department, and loan document department. The relationship manager only submits the application.”³⁷⁵

Even if the Response here is not regarded as a tacit admission that Respondent served as ezMed’s Relationship Manager, the response speaks only to that part of the application process that *occurs after* the submission of the application to the Bank. Respondent raised no factual claim that disputed Mr. Bushman’s description of the need for factually correct *inputs*, including any input present in the application itself. Nor did the Response contradict the declaration that applications must be submitted by persons who are objective and have no financial interest in the transaction.

As the Response to the averments in this Paragraph do not identify controverted material facts, the Response here will not prevent summary disposition.

Ly-Vu did not disclose that the owner of ezMed was her husband or that she had been identified as ezMed’s Chief Financial Officer

138. Enforcement Counsel averred that until Bank staff uncovered Ly-Vu’s connections to ezMed themselves in December 2017, and at the time of ezMed’s loan application and approval decision, Bank Management (including Regional Operations Manager Ingram, Ly-Vu’s superior, and Credit Manager Bushman, who approved the ezMed loan) and underwriting staff (Credit Analyst Yushak) were not aware that Ly-Vu was married to Vu, ezMed’s principal, or that she had been designated as ezMed’s Chief Financial Officer.

In support of these averments, Enforcement Counsel presented the Declaration of Barbara Ingram, who was Respondent’s direct supervisor at the Bank from September 6, 2016 to January 3, 2018.³⁷⁶ According to Ms. Ingram:

Before December 2017, I was not aware that, during the ezMed loan application and approval process, Ms. Ly-Vu was married to a customer of the Bank—Mr. Vu, the principal shareholder of ezMed, who also served as the sole guarantor of the ezMed loan. I also was not aware that, at the time of

³⁷⁴ EC SD Ex. 4 at ¶ 52.

³⁷⁵ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 137, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 16.

³⁷⁶ EC SD Ex. 9, Declaration of Barbara Ingram at ¶ 7.

the ezMed loan application, Ms. Ly-Vu was designated as ezMed's Chief Financial Officer.³⁷⁷

Enforcement Counsel also presented a copy of the Loan Transfer Approval Form dated March 14, 2018, prepared by Michael Yushak and concurred by Regina Sheldon.³⁷⁸ In the "Reason for Transfer Request" portion of the form, Mr. Yushak wrote that the subject loan, with ezMed Cloud Inc. shown as the borrower and Mike Vu as guarantor, "was established in December of 2016 with a 12/10/17 maturity date."³⁷⁹ Mr. Yushak reported that "[t]he Bank elected not to renew the RLOC as it was determined that the RM who introduced the Borrower to the Bank was married to the Guarantor, Mike Vu [who is] the sole guarantor on the loan and 100 percent owner of the firm. This relationship was not disclosed when the loan was underwritten, creating a conflict of interest."³⁸⁰

Relying solely on her own Declaration, Respondent responded to these averments by stating that "it was common knowledge throughout PPB that Vu and I were married."³⁸¹ Through her Declaration, Respondent averred that the Bank's underwriter, Mr. Yushak, its Customer Service for Treasury, Kim Davisson, its Senior Vice President/Director, Toby Reschan, its Senior VP Walt Walton, its Branch Service Manager, Brittny [*sic*] Cipolla, its Customer Service Reps, Crystal Garcia and Timanda Sagon, and "many others had full knowledge that Vu and Ly-Vu were married."³⁸²

Without more, Respondent's Declaration on this point lacks evidentiary weight sufficient to establish a factual controversy. As noted above, when responding to factual claims presented in support of a motion for summary disposition, the responding party must support factual claims "by evidence of the same type as that submitted with the motion for summary disposition".³⁸³

In this context, Respondent's burden – showing that her marital state was common knowledge at the Bank – was relatively light. That burden could have been met by declarations from any of the persons she identified in her Response with knowledge of her marital status.

Bereft of such evidence, and in the face of evidence both testamentary (Ms. Ingram's Declaration) and documentary (the contemporaneous report of Mr. Yushak in the Loan Transfer Application), Respondent's self-serving Declaration cannot constitute evidence sufficient to avoid summary disposition on this point.

139. Pursuant to the Code of Conduct and prudent banking practices, Ly-Vu was required to disclose her familial and personal interests in ezMed to Bank Management or Human Resources, or her direct supervisor at the time, Regional Operations Manager Ingram.³⁸⁴

³⁷⁷ See *id.* ¶ 40.

³⁷⁸ EC SD Ex. 36.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ Declaration of Mai Ly-Vu in Support of Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 17.

³⁸² Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 138, citing Declaration of Mai Ly-Vu in Support of Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 17.

³⁸³ 12 C.F.R. § 19.26(b)(2).

³⁸⁴ See EC SD Ex. 4 (Bushman Decl.) ¶ 57 & EC SD Ex. 9 (Ingram Decl.) ¶ 41.

140. Credit Manager Bushman would have expected Ly-Vu to disclose such a conflict of interest to him or members of his staff upon her submission of ezMed's loan application.³⁸⁵

141. That is because the existence of personal interests in the outcome of a lending decision by any Bank employee directly involved in the application and approval processes is highly relevant to the Bank's oversight of, and controls surrounding, the underwriting and origination processes.³⁸⁶

142. Enforcement Counsel averred that as the Relationship Manager for ezMed at the time of its loan application, Respondent influenced the Bank's collection of credit-related information and communicated directly with ezMed on behalf of the Bank in resolving certain questions regarding derogatory credit findings, including the aforementioned lien, and her failure to disclose her personal interest in the outcome of the ezMed loan calls into question the integrity of the entire loan application and underwriting processes.

In support of this averment, Enforcement Counsel presented Mr. Bushman's Declaration, where he stated:

The existence of personal interests in the outcome of a lending decision by any Bank employee directly involved in the application and approval processes is highly relevant to the Bank's oversight of, and controls surrounding, the underwriting and origination processes. In this instance, Ms. Ly-Vu's failure to disclose her personal interest in the outcome of the ezMed loan calls into question the integrity of the entire loan application and underwriting processes because, as the Relationship Manager for the ezMed loan application, she influenced the Bank's collection of credit-related information and communicated directly with ezMed on behalf of the Bank in resolving certain questions regarding derogatory credit findings, including the aforementioned lien.³⁸⁷

Respondent averred that her responsibility "is to submit the loan application."³⁸⁸ Making no reference to the record to support her response, she averred that after the submission of a loan application, she has "no knowledge of [the Bank's] processes or procedures in the credit department, including processing and underwriting guidelines. [Respondent] only knows if the loan has been approved or decline [*sic*] or if additional documents are needed."³⁸⁹

On its face, this Response does not contradict the averments in this Paragraph – but instead asserts Respondent's lack of relevant knowledge such that she cannot and does not dispute Enforcement Counsel's averments. Through this response, Respondent tacitly acknowledges both her role in introducing the application to the Bank, and her continuing responsibility to serve the borrower and the Bank if additional documents are needed to support the application. She does not deny Enforcement Counsel's claim that she influenced the Bank's collection of credit-related information, and does not deny the her role in resolving certain

³⁸⁵ See EC SD Ex. 4 (Bushman Decl.) ¶ 57.

³⁸⁶ See *id.* at ¶ 58.

³⁸⁷ *Id.* ¶ 58.

³⁸⁸ Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 142, citing Declaration of Mai Ly-Vu in Support of Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 18.

³⁸⁹ *Id.*

questions regarding derogatory credit findings and her failure to disclose her personal interest in the outcome of the ezMed loan.

Finding this Response does not present a controversy concerning material facts, the Response cannot serve as a basis for denying summary disposition.

143. Enforcement Counsel aver that if the Bank's Credit Manager Bushman or Regional Operations Manager Ingram had known that Respondent was married to a principal of ezMed, or that she had been a named executive officer of ezMed during the application process, they would have required Respondent to recuse herself from formal matters related to the loan application and underwriting processes, and would have assigned the loan application to a different Relationship Manager.

In support, Enforcement Counsel presented Mr. Bushman's Declaration on this point:

Had I known that Ms. Ly-Vu was married to a principal of ezMed, or that she had been a named executive officer of ezMed during the application process, I would have required Ms. Ly-Vu to recuse herself from all matters related to the loan application and underwriting processes, and would have worked with her manager to assign the loan application to a different Relationship Manager. Pursuant to the Code of Conduct, to maintain the objectivity and legitimacy of the underwriting process and lending decision, it is essential that all employees—and especially Relationship Managers, who may influence the decisional inputs—are recused from transactions in which they have a familial or financial interest.³⁹⁰

Further, Enforcement Counsel presented Ms. Ingram's Declaration on this point:

Pursuant to the Bank's Code of Conduct, and in what my experience would constitute prudent banking practices, Ms. Ly-Vu had an obligation to disclose to me or other Bank management her familial connection to, and personal financial interests in, ezMed. Had I known that Ms. Ly-Vu was married to a principal of ezMed, or that she was identified as an executive officer of ezMed, I would have required Ms. Ly-Vu to recuse herself from all matters related to the loan application and underwriting process, and reported the matter to my superior with a recommendation for further investigation by the Bank.³⁹¹

Respondent does not controvert the averments shown here. She makes no averment that controverted the averment that pursuant to the Code of Conduct, to maintain the objectivity and legitimacy of the underwriting process and lending decision, the Bank determined that is essential that all employees – and especially Relationship Managers, who may influence the decisional inputs – be recused from transactions in which they have a familial or financial interest.³⁹² Neither did she controvert Regional Operations Manager Ingram's declaration that:

Over the course of 40 years in banking, I am not aware of any other instance in which a bank employee has failed to disclose, or was given authorization,

³⁹⁰ EC SD Ex. 5 at ¶ 59.

³⁹¹ EC SD Ex. 9 at ¶ 41.

³⁹² EC SD Ex. 4 (Bushman Decl.) ¶ 59; EC SD Ex. 9 (Ingram Decl.) ¶ 41.

to handle the loan application or account of an immediate relative. In my view, this likely is due to the fact that it is common knowledge among bank employees that engaging in such conflicts of interest—handling loan transactions involving oneself or one’s immediate family members—is strictly prohibited in the banking industry.³⁹³

Instead, Respondent’s Response to the averments presented in this Paragraph is limited to asserting that she “was not involved with any decision making” at the Bank once the loan application was submitted to the proper department – averring that those decisions are made by the Bank’s credit, processing, and underwriting departments.³⁹⁴

Inasmuch as this Response does not demonstrate a controversy with respect to the factual averments in this Paragraph, nothing in this Response will defeat a summary disposition motion.

144. Credit Manager Bushman would also have conducted additional due diligence to ensure that the business was legitimate, to better understand Ly-Vu’s relationship with and role in the business, if any, and, most importantly, to determine how loan proceeds would be utilized.³⁹⁵

Ly-Vu did not disclose that Vu paid and was expected to continue paying Ly-Vu for household expenses from ezMed’s account

145. Enforcement Counsel aver that until she was confronted after Bank staff uncovered Respondent’s connections to ezMed (as described below) in December 2017, approximately one year after ezMed applied for and obtained the loan, Respondent did not disclose to the Human Resource office, Bank Management (including Regional Operations Manager Ingram and Credit Manager Bushman) or underwriting staff (Credit Analyst Yushak) that Vu had made payments to her for household expenses using ezMed’s funds, and at no point did she disclose that she expected to continue receiving such payments from ezMed.

Enforcement Counsel supported this averment with an excerpt from Mr. Bushman’s Declaration stating:

Before June 2020, and at the time of the loan application and approval decision, I was not aware of any arrangement between Ms. Ly-Vu and her husband under which he made payments to her from ezMed’s account, on a monthly basis when funds were available. Nor was I aware that, at the time of the loan application, Ms. Ly-Vu expected to continue to receive such payments.³⁹⁶

Enforcement Counsel also presented Ms. Ingram’s Declaration stating:

Before December 2017, and at the time of ezMed’s loan application and approval decision, I was not aware of any arrangement between Ms. Ly-Vu and her husband under which he made payments to her from ezMed’s account, on a monthly basis when funds were available, for purposes of

³⁹³ EC SD Ex. 9 (Ingram Decl.) at ¶¶ 41-42.

³⁹⁴ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 143, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 19.

³⁹⁵ EC SD Ex. 4 (Bushman Decl.) ¶ 60.

³⁹⁶ EC SD Ex. 4 (Bushman Declaration) at ¶ 61.

paying household expenses. Nor was I aware that, at the time of the loan application, Ms. Ly-Vu expected to continue to receive such payments.³⁹⁷

In response, Respondent averred that “Credit Analyst Michael Yushak was well aware that Vu and Ly-Vu were married. Yushak saw during credit and underwriting that Ly-Vu’s name was on the SOI dated January 13, 2016.”³⁹⁸

Nothing in this Response contradicts the declarations presented by Mr. Bushman and Ms. Ingram, as there is no averment that Mr. Yushak informed either Mr. Bushman or Ms. Ingram of anything regarding Respondent’s marital status. Further, there is no evidence, beyond Respondent’s own unsupported Declaration, indicating Mr. Yushak knew Respondent was married to the borrower in the ezMed loan application. Examining the January 13, 2016 SOI, I found no reference to Respondent’s marital status or evidence stating that she was married to the borrower.³⁹⁹

In the absence of evidence controverting the averments presented through the declarations of Mr. Bushman and Ms. Ingram, I find nothing in this Response that would prevent summary disposition.

146. The terms of ezMed’s loan application and Loan Agreement required that loan proceeds be used for a business-related purpose, such as to serve as working capital, to purchase new equipment, to acquire new channels of business, or to refinance or consolidate existing debt.⁴⁰⁰ The loan application required an applicant and any principal signing on its behalf to certify that “the proceeds of any credit extended as a result of [the] application will be used solely for business purposes . . . and not for any personal, family, or household use.”⁴⁰¹ Vu signed this certification as ezMed’s Chief Executive Officer on November 28, 2016.⁴⁰² The Loan Agreement similarly required borrowers to certify that proceeds “will be used solely for business purposes . . . and not for any personal, family, or household use.”⁴⁰³ Vu signed, and initialed each page of, the Loan Agreement as guarantor of the line of credit on December 14, 2016.⁴⁰⁴

147. Pursuant to the Bank’s Code of Conduct and prudent banking practices, Ly-Vu should have disclosed to Bank Management or the Human Resource office any personal financial arrangements between her and ezMed, and any expectations for such arrangements to continue after—or to rely on—the approval of the loan.⁴⁰⁵

³⁹⁷ EC SD Ex. 9 (Ingram Decl.) ¶ 43

³⁹⁸ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 145, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 20.

³⁹⁹ See EC SD Ex. 17. The Statement of Information dated January 13, 2016 identifies Michael D. Vu as the CEO, Britney N. Vu as the Secretary, and Mai Ly-Vu as the CFO; and provides the same mailing address for all three officers, but is silent with respect to the marital status of any of these officers.

⁴⁰⁰ EC SD Ex. 4 (Bushman Decl.) ¶ 62.

⁴⁰¹ EC SD Ex. 35 (Modified Loan Application) at *998.

⁴⁰² *Id.*

⁴⁰³ EC SD Ex. 40 (Loan Agreement), at *829.

⁴⁰⁴ *Id.* at *829, 832.

⁴⁰⁵ See EC SD Ex. 4 (Bushman Decl.) ¶ 63; EC SD Ex. 9(Ingram Decl.) ¶ 44.

148. Credit Manager Bushman furthermore would have expected Ly-Vu to disclose her financial arrangements with ezMed to him or members of his staff at the time of the loan application.⁴⁰⁶

149. The existence of this undisclosed financial arrangement – and the anticipated use of loan proceeds to continue those household expense payments, i.e., non-business expenses – reflect both a conflict of interest and an intention to violate the terms of the loan agreement, and would have been directly relevant to Credit Manager Bushman’s loan approval determination.⁴⁰⁷

150. Had Credit Manager Bushman known of the foregoing personal financial arrangement between Ly-Vu and Vu and ezMed, or that loan proceeds would be used to pay for non-business expenses, he would have declined the loan.⁴⁰⁸ QuickScore loans are not consumer products, and it is essential that loan proceeds not be used for non-business expenditures. Accordingly, ezMed would not have qualified for the QuickScore loan.⁴⁰⁹

151. Either before or after the approval of the loan, if Credit Manager Bushman had learned that Vu had a practice of paying Ly-Vu for household expenses from ezMed’s deposit account, or that Ly-Vu had any expectations of receiving such payments in the future, he would have asked Ly-Vu to recuse herself from all matters related to ezMed’s accounts, which he would have assigned to a different Relationship Manager.⁴¹⁰ To maintain the objectivity and legitimacy of the underwriting process and lending decision, it is essential that all employees—and especially Relationship Managers, who may influence the decisional inputs—are recused from transactions in which they have a familial or financial interest.⁴¹¹

Ly-Vu did not disclose that ezMed was indebted to Ly-Vu as a result of loans Ly-Vu had made to the company

152. At no point during the relevant period, including when ezMed was applying for the QuickScore loan, did Ly-Vu disclose to the Human Resources office, Bank Management (including Regional Operations Manager Ingram and Credit Manager Bushman) or underwriting staff (Credit Analyst Yushak) that ezMed or Vu owed her money, or that she expected repayment from ezMed.⁴¹²

153. Unreported, personal debts would not have appeared on ezMed’s credit report.⁴¹³

154. While repayment or consolidation of preexisting debts, in some cases, may be considered a permissible use of loan proceeds, borrowers intending to use loan proceeds in such manner are expected to disclose on the loan application, under “Purpose of Credit Request, “that loan proceeds would be used for “debt consolidation.”⁴¹⁴

⁴⁰⁶ EC SD Ex. 4 (Bushman Decl.) ¶ 63.

⁴⁰⁷ *Id.* ¶ 64.

⁴⁰⁸ *Id.* ¶ 65.

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.* ¶ 66.

⁴¹¹ *Id.*

⁴¹² EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 106:3-9; EC SD Ex. 4 (Bushman Decl.) ¶¶ 68-69; EC SD Ex. 9(Ingram Decl.) ¶ 47; EC SD Ex. 36 (Loan Transfer Approval Form).

⁴¹³ EC SD Ex. 4 (Bushman Decl.) ¶¶ 68.

⁴¹⁴ See, e.g., EC SD Ex. 35 (Modified Loan Application) at *998; EC SD Ex. 4 (Bushman Decl.) ¶ 70.

155. Pursuant to the Code of Conduct and prudent banking practices, Ly-Vu was required to disclose such interests in ezMed to Bank Management or the Human Resources office.⁴¹⁵

156. Accordingly, Credit Manager Bushman would have expected Vu to disclose on ezMed's loan application that the proceeds would be used for "debt consolidation," rather than or in addition to "working capital" and "equipment purchase," which were selected.⁴¹⁶ Credit Manager Bushman also would have expected Ly-Vu to ensure that the intended purpose of the credit request was accurately reflected on the loan application before she submitted it to the Bank for consideration.⁴¹⁷ Had Vu or Ly-Vu truthfully disclosed the true purpose of ezMed's credit request, Credit Manager Bushman would have been alerted to the existence of private debt not visible to the credit reporting agencies, and he would have inquired further about the terms of the outstanding debt.⁴¹⁸

157. Had Credit Manager Bushman known that ezMed owed debt to the spouse of a principal, and in this case Ly-Vu, a Relationship Manager of the Bank, he would have asked for evidence of the existence of the loan between ezMed and Ly-Vu, including at the very least a written promissory note, and evidence of the intended and actual use of such debt.⁴¹⁹ Repayment of corporate debts incurred for purposes of paying non-business expenses, for example, would not be a permissible use of a QuickScore loan.⁴²⁰ Credit Manager Bushman would have been highly skeptical of the legitimacy of informal debts held between a husband (or his company) and wife.⁴²¹

158. Any extension of credit to, or involvement in the business activities of, a Bank customer by an employee of the Bank, poses a conflict of interest with the employee's duties and loyalties to the Bank.⁴²² Pursuant to the Code of Conduct, Ly-Vu should have disclosed to Bank Management or the Human Resources office her creditor-debtor relationship with ezMed and her associated interest in the outcome of the ezMed loan.⁴²³

159. The existence of such financial interests—and alternative, undisclosed uses of loan proceeds—constitutes a conflict of interest, and would have influenced Credit Manager Bushman's review of the loan application and final credit determination.⁴²⁴

160. Had Credit Manager Bushman known that ezMed was indebted to Ly-Vu and that loan proceeds would be used, even in part, to repay such debts, or that Ly-Vu expected to receive any payments from ezMed as repayments for prior loans, he would have required Ly-Vu to recuse herself from all matters related to the loan application and underwriting process, and would have assigned the loan account to a different Relationship Manager.⁴²⁵ Pursuant to the Code of Conduct, to maintain the objectivity and legitimacy of the underwriting process and lending decision, it is essential that all employees—and especially Relationship Managers, who

⁴¹⁵ See EC SD Ex. 4 (Bushman Decl.) ¶ 73 & EC SD Ex. 9 (Ingram Decl.) ¶ 48.

⁴¹⁶ See EC SD Ex. 4 (Bushman Decl.) ¶ 71.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ *Id.* ¶ 72.

⁴²⁰ *Id.*

⁴²¹ *Id.* ¶ 76.

⁴²² *Id.* ¶ 73.

⁴²³ *Id.*

⁴²⁴ *Id.* ¶ 74.

⁴²⁵ *Id.* ¶ 75.

may influence the decisional inputs—are recused from transactions in which they have a familial or financial interest.⁴²⁶

Ly-Vu did not disclose that ezMed used funds from the line of credit to make payments to her (for household expenses and loan repayments).

161. Ly-Vu did not disclose to the Human Resources office, Bank Management (including Regional Operations Manager Ingram and Credit Manager Bushman) or underwriting staff (Credit Analyst Yushak)—before being confronted by Bank staff following their independent identification of Ly-Vu’s connections to ezMed in December 2017—that she had received any loan repayments or payments for household expenses from ezMed after the loan was funded.⁴²⁷ Nor did Ly-Vu disclose that these payments were made with funds ezMed obtained from its line of credit.⁴²⁸

162. Had Credit Manager Bushman learned after the loan was approved that ezMed’s loan proceeds had been used to pay Ly-Vu for household expenses—a non-business purpose prohibited by the terms of the Loan Agreement—he would have reported the matter to his superior, the Chief Credit Officer, and other Bank Management as appropriate and, in doing so, would have recommended freezing the line of credit pending further investigation by the Bank.⁴²⁹

Controverted Fact #3: Ly-Vu did not disclose that she acquired or claimed an ownership interest in ezMed and financially benefitted from that ownership (actual or claimed)

163. Enforcement Counsel averred that at no point did Respondent disclose to Bank Management (including Regional Operations Manager Ingram and Credit Manager Bushman) or underwriting staff (Credit Analyst Yushak) that she held any equity interest in ezMed, or claimed such an equity interest for purposes of seeking tax benefits.

In support of this averment, Enforcement Counsel presented a copy the Loan Transfer Approval Form, showing the Bank’s report that transfer would be disapproved because of the recently disclosed relationship between Respondent and the borrower;⁴³⁰ and the Declaration of Mr. Bushman that “[a]t no point in time during the pendency or resolution of the ezMed line of credit did I learn that Ms. Ly-Vu held any equity interest in ezMed.”⁴³¹ In further support, they presented Ms. Ingram’s Declaration, stating the same.⁴³²

In her Response, Respondent did not address the averments by Mr. Bushman and Ms. Ingram regarding their lack of knowledge of any interest Respondent had in ezMed. Instead, she averred that she had “no vested interest in ezMed or its operations,” adding that when Mr. Vu “gives [Respondent] a check or [K]-1 [Respondent] would not ask why since they’ve been

⁴²⁶ *Id.*

⁴²⁷ See *id.* ¶¶ 61, 65, 68, 69; EC SD Ex. 9 (Ingram Decl.) ¶ 43, 47; EC SD Ex. 36 (Loan Transfer Approval Form).

⁴²⁸ See EC SD Ex. 4 (Bushman Decl.) ¶¶ 61, 65, 67, 69; EC SD Ex. 9 (Ingram Decl.) ¶ 43, 45, 47; EC SD Ex. 36 (Loan Transfer Approval Form).

⁴²⁹ EC SD Ex. 4 (Bushman Decl.) ¶ 67.

⁴³⁰ EC SD Ex. 36.

⁴³¹ *Id.* ¶ 77.

⁴³² EC SD Ex. 9 (Ingram Decl.) ¶ 49.

together for over 30 years” and Respondent “was never privy to how Vu operates and conducts Vu’s business.”⁴³³

It is not clear from the record before me that Respondent *had* an equity interest – whether vested or not – in ezMed Cloud, Inc. The averments presented by Enforcement Counsel suggest such an interest may have been established, but there is insufficient uncontroverted evidence in the record that establishes such an interest existed during the relevant time period. Given that the burden of presenting such evidence is on Enforcement Counsel, and given that for the purposes of summary disposition motions inferences that exist must be determined in Respondent’s favor, the averments in this Paragraph cannot be used to support Enforcement Counsel’s Motion.

164. Pursuant to the Code of Conduct and prudent banking practices, upon assuming any ownership in ezMed, either before or after the Bank’s approval of ezMed’s line of credit, Ly-Vu would have had an obligation to report her personal interest in the line of credit to Bank⁴³⁴

165. If Credit Manager Bushman had learned that Ly-Vu held an equity interest in an active borrower of the Bank, or claimed to own such an interest for tax purposes, he would have reported the matter to his superior, the Bank’s Chief Credit Officer, and other Bank Management as appropriate, and recommended further investigation by the Bank.⁴³⁵

Ly-Vu did not disclose accurate information about, or correct false information on, the loan application

Ly-Vu did not disclose to PPB that the loan proceeds would be used for nonbusiness expenses in violation of the Loan Agreement

166. As explained above, QuickScore loan applications required applicants to indicate the “Purpose of Credit Request,” loan proceeds were required to be used for a business-related purpose, and applicants were required to certify that they intended to comply with this requirement.⁴³⁶ Vu indicated on ezMed’s loan application that the proceeds would be used for “working capital” and “equipment/purchase.”⁴³⁷

167. As a Branch Service Manager with more than 30 years of experience, and ezMed’s Relationship Manager with respect to the instant transaction, Ly-Vu was aware in November and December 2016 that proceeds from the QuickScore loan could not be used for personal expenses.⁴³⁸

168. Ly-Vu has testified that she does not view her personal household expenses as relating to ezMed’s business.⁴³⁹

169. Nevertheless, at no point, including during the period when ezMed was applying for the QuickScore loan, did Ly-Vu disclose to anyone at the Bank that she knew ezMed’s funds

⁴³³ Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 163, citing Declaration of Mai Ly-Vu in Support of Respondent’s Response to the Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 21.

⁴³⁴ Management. EC SD Ex. 4 (Bushman Decl.) ¶ 78.

⁴³⁵ *Id.* ¶ 79.

⁴³⁶ See, *supra*, ¶¶ 95-96.

⁴³⁷ *Id.*

⁴³⁸ See EC SD Ex. 40 (Loan Agreement) at *829; EC SD Ex. 35 (Modified Loan Application) at *998.

⁴³⁹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 90:5-7 (Q: “Were your household expenses related to ezMed’s business?” A: “Our household expenses? No.”).

would be used, at least in part, for non-business purposes (including to pay her for household expenses).⁴⁴⁰ Nor did Ly-Vu require Vu to correct ezMed's loan application when she forwarded it to the Bank as ezMed's Relationship Manager.⁴⁴¹

170. Credit Manager Bushman would have expected Ly-Vu, who had an expectation that at least a portion of the proceeds would be used to pay for household expenses and to repay her for loans she had made to ezMed, to disclose the true purpose of the credit request, or to require Vu to correct his loan application, rather than forward a loan application containing false information to the Bank.⁴⁴²

Ly-Vu did not disclose that Vu had been convicted of a felony

171. QuickScore loan applications also required guarantors to indicate whether they had been convicted of any felonies.⁴⁴³ As the guarantor on ezMed's loan, Vu indicated on the loan application that he had never been convicted of a felony.⁴⁴⁴

172. In fact, Vu had been convicted of aiding and abetting wire fraud and aiding and abetting the transportation of stolen property during the time of his marriage to Ly-Vu.⁴⁴⁵

173. Credit Manager Bushman would have expected Ly-Vu, as the Relationship Manager, to disclose the fact that Vu—her husband—had been convicted of a felony, or to require Vu to correct his loan application, rather than simply forwarding a loan application containing false information to the Bank.⁴⁴⁶ Had Ly-Vu disclosed that Vu had been convicted of aiding and abetting wire fraud and aiding and abetting the transportation of stolen property, then Credit Manager Bushman would have applied more scrutiny to the ezMed application and may have requested additional financial reporting to verify information contained in the credit report and loan application.⁴⁴⁷

Ly-Vu made false statements to the Bank in certifications required by the Code of Conduct regarding her conflicts of interest

174. As explained above, pursuant to the Code of Conduct, every Bank employee is required to submit on an annual basis a signed Statement of Personal Interest responding to various questions regarding their personal financial interests in any customer of the Bank.⁴⁴⁸

175. By requiring the annual submission of statements of personal interest, the Bank put its employees on notice that conflicts of interest were and are to be interpreted broadly, disclosed fully, and prohibited entirely.⁴⁴⁹

⁴⁴⁰ See EC SD Ex. 4 (Bushman Decl.) ¶¶ 53, 61, 65, 67, 69; EC SD Ex. 9 (Ingram Decl.) ¶¶ 39, 43, 45, 47; EC SD Ex. 36 (Loan Transfer Approval Form)

⁴⁴¹ See EC SD Ex. 4 (Bushman Decl.) ¶¶ 53, 80.

⁴⁴² EC SD Ex. 4 (Bushman Decl.) ¶ 80.

⁴⁴³ See EC SD Ex. 35 (Modified Loan Application) at *999.

⁴⁴⁴ *Id.*

⁴⁴⁵ See, *supra*, ¶ 50.

⁴⁴⁶ See EC SD Ex. 4 (Bushman Decl.) ¶ 81.

⁴⁴⁷ *Id.*

⁴⁴⁸ See EC SD Ex. 9 (Ingram Decl.) ¶ 52; see also Exs. 6 & 7 (Personal Interest Statements 2016 & 2017).

⁴⁴⁹ EC SD Ex. 9 (Ingram Decl.) ¶ 58.

176. As explained above, Ly-Vu signed (either by hand or electronically) and submitted Statements of Personal Interest on November 29, 2016, and September 5, 2017, through which she generally denied having any interest in any business or customer of the Bank.⁴⁵⁰

177. Ly-Vu made several false statements or omissions through her responses to those personal interest questionnaires.⁴⁵¹

178. First, the personal interest questionnaires asked whether Ly-Vu had “accepted any gift of a value in excess of \$100 from [a] customer.”⁴⁵² On both forms, Ly-Vu responded to this question by checking the box next to “no.”⁴⁵³

179. In fact, Ly-Vu admits that she received payments from ezMed, a customer of the Bank, between September 2016 and November 2017, as explained in detail above.⁴⁵⁴ Thus, Ly-Vu should have checked the box next to “yes” in response to this question on both of the Personal Interest Statements.

180. Second, the personal interest questionnaires asked whether Ly-Vu had “accepted anything of value directly or indirectly from anyone in connection with the business of the [Bank].”⁴⁵⁵ On both forms, Ly-Vu responded to this question by checking the box next to “no.”⁴⁵⁶

181. In fact, ezMed’s payments to Ly-Vu were funded by the Bank’s line of credit, as explained in detail above.⁴⁵⁷ Accordingly, Ly-Vu should have checked the box next to “yes” in response to this question on the 2017 Personal Interest Statement.⁴⁵⁸

182. Third, the personal interest questionnaires asked, in a multi-part question, whether-Vu had “influenced the extension of credit to . . . [a] customer where the proceeds were used to pay a debt owing to you or a member of your immediate family [,] a customer who is your relative [,] . . . or a firm in which you or a member of your immediate family has a financial interest or with which you are employed on a part-time or consulting basis.”⁴⁵⁹ On both forms, Ly-Vu responded to these sub-questions by checking the boxes next to “no.”⁴⁶⁰

183. In fact, as explained in detail above, ezMed was either wholly or at least partly owned by Vu, Ly-Vu’s husband; Ly-Vu had a financial interest in ezMed (the debt ezMed owed her as well as her expectation of continued payment of household expenses), and proceeds of the ezMed loan were used to pay debt ezMed owed to Ly-Vu.⁴⁶¹

⁴⁵⁰ See Exs. 6 & 7 (Personal Interest Statements 2016 & 2017).

⁴⁵¹ EC SD Ex. 9 (Ingram Decl.) ¶¶ 54-57.

⁴⁵² EC SD Ex. 6 (Personal Interest Statement (2016)), at *476; EC SD Ex. 7 (Personal Interest Statement (2017)), at *486.

⁴⁵³ *Id.*

⁴⁵⁴ See, *supra*, ¶¶ 113-135.

⁴⁵⁵ EC SD Ex. 6 (Personal Interest Statement (2016)), at *476; EC SD Ex. 7 (Personal Interest Statement (2017)), at *486.

⁴⁵⁶ *Id.*

⁴⁵⁷ EC SD Ex. 4 (Bushman Decl.) ¶¶ 55, 69; see, *supra*, ¶¶ 113-135

⁴⁵⁸ EC SD Ex. 9 (Ingram Decl.) ¶ 55.

⁴⁵⁹ EC SD Ex. 6 (Personal Interest Statement (2016)), at *476; EC SD Ex. 7 (Personal Interest Statement (2017)), at *486.

⁴⁶⁰ *Id.*

⁴⁶¹ See, *supra*, ¶¶ 53-62 (ownership), ¶¶ 66-70 (Ly-Vu’s financial interest), & ¶¶ 112-135 (payments to Ly-Vu).

184. Additionally, assuming the 2017 Schedule K-1 ezMed issued to Ly-Vu accurately identified ezMed's shareholders for the year (presumably so, given that those documents were filed with the IRS and FSB), then Lu-Vu acquired a majority stake in ezMed in 2017, constituting an additional financial interest Ly-Vu personally held in the company.⁴⁶²

185. Ly-Vu improperly withheld the foregoing information from the Bank during ezMed's application process (and thereafter) and, because she was a Relationship Manager and gatekeeper of the information flowing from ezMed to the Bank, she thus influenced the Bank's decision to extend credit to ezMed.⁴⁶³ Accordingly, Ly-Vu should have checked the boxes next to "yes" in response to each of these sub-questions on the 2017 Personal Interest Statement.⁴⁶⁴

186. Fourth, the personal interest questionnaires asked Ly-Vu whether there were any "circumstances or any other matters of a personal or family nature that could reasonably be subject to question as to their effect on the interests of the [Bank]." ⁴⁶⁵ On both forms, Ly-Vu responded to this question by checking the box next to "no."⁴⁶⁶

187. As explained in detail above, Ly-Vu had a familial relationship with and personal financial interest in ezMed and the loan to ezMed, and she facilitated the misuse of ezMed's loan proceeds.⁴⁶⁷ Each placed the Bank's assets at-risk.⁴⁶⁸ Accordingly, Ly-Vu should have checked the box next to "yes" in response to this question.⁴⁶⁹

188. Had Ly-Vu responded to any of the foregoing questions truthfully, the Bank would have been alerted to Ly-Vu's conflicts of interest, including her many financial gains from ezMed's loan as well as those of her husband sooner and may have sought to place restrictions on disbursements from the line of credit.⁴⁷⁰

Controverted Fact #4: Ly-Vu expected that Vu and ezMed would use loan proceeds for her personal benefit

Ly-Vu Did Not Safeguard the Bank's Assets When She Engaged in Self-Dealing

189. Enforcement Counsel aver that as a general matter, and in addition to the foregoing, by facilitating the Bank's extension of credit to ezMed with the expectation that Vu and ezMed would rely on at least a portion of loan proceeds to pay her for household expenses and to repay her for loans she had made to ezMed, and by accepting those payments from ezMed, Respondent accepted the Bank's assets for her personal benefit and, in doing so, failed to safeguard Bank assets under the Code of Conduct.

⁴⁶² See EC SD Ex. 28 (Schedule K-1 (2017)) at *005.

⁴⁶³ EC SD Ex. 9 (Ingram Decl.) ¶ 56; EC SD Ex. 4 (Bushman Decl.) ¶¶ 51-81; see also, supra, ¶¶ 136-173.

⁴⁶⁴ EC SD Ex. 9 (Ingram Decl.) ¶ 56.

⁴⁶⁵ EC SD Ex. 6 (Personal Interest Statement (2016)), at *476; EC SD Ex. 7 (Personal Interest Statement (2017)), at *486.

⁴⁶⁶ *Id.*

⁴⁶⁷ See, supra, ¶¶ 136-173; EC SD Ex. 9 (Ingram Decl.) ¶ 57.

⁴⁶⁸ EC SD Ex. 9 (Ingram Decl.) ¶ 57.

⁴⁶⁹ *Id.* ¶ 57.

⁴⁷⁰ *Id.* ¶ 55-57.

In support, beyond the references to the record preceding this Paragraph, Enforcement Counsel cite to the following language in the Bank's Codes of Conduct, first from 2015, and again from the Code in effect between 2016 and 2017:

F. Protecting Corporate Assets

Directors, officers, and employees are responsible for safeguarding the tangible and intangible assets of the Company, its customers, suppliers, and distributors that are under our control. Company assets may not be used for personal benefit except where permitted by the Company with local practices and laws. . . . Misappropriating of corporate assets is a breach of your duty to the Company and may constitute an act of fraud.⁴⁷¹

In her Response, Respondent does not controvert the language found in the Code of Conduct cited by Enforcement Counsel, nor does she claim an exemption from its terms. Instead Respondent avers she "had no specific knowledge as to what Vu would do with the loan that he applied for and acquired from PPB, since [Respondent] was not involved with ezMed."⁴⁷²

The critical factual averments as presented in this Paragraph and disputed by Respondent are that Respondent facilitated the Bank's extension of credit to ezMed with the expectation that Vu and ezMed would rely on at least a portion of loan proceeds to pay her for household expenses, and that the proceeds would also be used to repay her for loans she had made to ezMed. Enforcement Counsel's reference to the Code of Conduct does not address the critical factual premise regarding Respondent's expectations and knowledge regarding how ezMed and her husband would use the proceeds. Like the question regarding whether Respondent knew she had been named as ezMed's CFO, the averments in this Paragraph must take into account Respondent's state of mind during the relevant time period. By averring a lack of such expectation and knowledge, Respondent has controverted the critical factual premises in this Paragraph. As such, the premises cannot be used to support summary disposition.

Ly-Vu's Other Conflicts of Interest Involving Family and Friends

190. Justin Enderton and Eddie Guerrero are Ly-Vu's brothers-in-law.⁴⁷³

191. On or around June 23, 2015, en4orm office interiors, inc. ("en4orm"), an entity owned by Enderton, obtained a \$100,000 revolving line of credit from the Bank.⁴⁷⁴

192. Enforcement Counsel averred that Respondent acted as a relationship manager on the en4orm line of credit application, and did not appropriately disclose to the Bank, pursuant to the Code of Conduct, her familial relationship with Enderton.

In support of this averment, Enforcement Counsel presented an excerpt from Respondent's deposition testimony stating as follows:

⁴⁷¹ EC SD Ex. 2 at FRB-MLV-0195469; EC SD Ex. 3 at FRB-MLV-0195480.

⁴⁷² Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 163, citing Declaration of Mai Ly-Vu in Support of Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 21.

⁴⁷³ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 157:11-13, 179:3-6; EC SD Ex. 20 (Enderton Dep. Transcr.) 19:15-18; EC SD Ex. 21 (Guerrero Dep. Transcr.) 22:25 – 23:5.

⁴⁷⁴ See en4ormLoan Approval, FRB-MLV-0194668 (EC SD Ex. 50); EC SD Ex. 20 (Enderton Dep. Transcr.) 13:5-10.

Q So what was your role with respect to the en4orm commercial loan application?

A I submitted the loan application.⁴⁷⁵

Enforcement Counsel also presented an excerpt of the deposition of Justin Enderton, 100 percent owner of en4orm.⁴⁷⁶ The excerpted testimony is as follows:

Q. In applying for the loan, you worked with Ms. Ly-Vu; correct?

A. My wife worked with Ms. Ly-Vu, yes.

Q. And Ms. Ly-Vu coordinated between en4orm and -- or your wife at en4orm and the bank; correct?

A. Yes.

Q. Is it your understanding that Ms. Ly-Vu collected application materials and other credit-related information in connection with the application?

A. Yes, because I had to fill out a personal financial information sheet. I do remember completing that.⁴⁷⁷

Further, Enforcement Counsel presented the Bank's Statement of Personal Interest bearing Respondent's signature and dated November 29, 2016.⁴⁷⁸ This Statement refers to the Bank's Employee Handbook and its Code of Business Conduct, and called for Respondent to answer questions about herself and "any member of your immediate family."⁴⁷⁹ Among the questions presented through this Statement, Respondent answered "No" to the question "Have you extended credit on behalf of the Company or otherwise influenced the extension of credit to:

A customer where the proceeds were used to pay a debt owing to you or a member of your immediate family?

A customer who is your relative?

An individual to finance the purchase of real estate or personal property from you?

A firm in which you or a member of your immediate family has a financial interest or with which you are employed on a part-time or consulting basis?⁴⁸⁰

Respondent averred that she "did disclose that en4orm is owned by Justin Enderton as Ly-Vu's brother in law in the attachment comments of the signed loan application dated 4/21/2015."⁴⁸¹ In support, Respondent referred to her own Declaration, and to the contents of the

⁴⁷⁵ EC SD Ex. 11 (Ly-Vu Dep. Transcr. 180:24 – 181:1).

⁴⁷⁶ EC SD Ex. 20 at 13.

⁴⁷⁷ EC SD Ex. 20 (Enderton Dep. Transcr.) 23:13 – 25:6.

⁴⁷⁸ EC SD Ex. 6 (Statement of Personal Interest) (2016).

⁴⁷⁹ *Id.* at 1.

⁴⁸⁰ *Id.*

⁴⁸¹ Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 192, citing Declaration of Mai Ly-Vu in Support of Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶ 23, and Resp. SD Ex. M.

Business Loan Application for en4orm Office Interiors, Inc.⁴⁸² In the “Comments” section, the author (who is not identified) stated “The primary purpose for the Line of Credit is for working capital, when needed. Justin ins my brother in law and without a doubt, one of the hardest working, honest, loyal and reliable person.”⁴⁸³

I have reviewed the Application, and see no evidence indicating or establishing that Respondent identified herself as the author of the Comments appended to the Application. Without more, there is no evidence (other than Respondent’s own unsupported Declaration) establishing a controverted fact regarding whether Respondent disclosed her identity as Mr. Enderton’s sister-in-law. Accordingly, Respondent’s Response does not present a controverted issue of fact that would preclude summary disposition.

193. On or around August 19, 2015, M.L.N.E.M. Corporation (“MLNEM”), an entity owned by Guerrero, obtained a \$25,000 commercial line of credit from the Bank.⁴⁸⁴ On or around June 13, 2016, on Guerrero’s request, the Bank increased the credit line to \$50,000. *Id.* On or around September 17, 2015, Pavescapes, a second company owned by Guerrero, obtained a \$25,000 commercial line of credit from the Bank.⁴⁸⁵ On or around June 13, 2016, on Guerrero’s request, the Bank increased the loan to \$50,000.⁴⁸⁶

194. Ly-Vu acted as a business banker on both the MLNEM and Pavescapes line of credit applications, and did not appropriately disclose to the Bank, pursuant to the Code of Conduct, her familial relationship with Guerrero.⁴⁸⁷

195. On or around March 17, 2015, Benedict Law, owned by Benedict, obtained a \$25,000 line of credit from the Bank.⁴⁸⁸ In April 2017 and again in July 2017, Benedict Law received two extensions on his line of credit from PPB.⁴⁸⁹ Throughout this period, Benedict was a business partner with Vu, and he co-owned Ly-Vu’s home with her.⁴⁹⁰

196. Ly-Vu acted as a business banker on the Benedict Law line of credit application, and did not appropriately disclose to the Bank, pursuant to the Code of Conduct, her or her family members’ relationship with Benedict.⁴⁹¹

⁴⁸² Resp. SD Ex. M.

⁴⁸³ *Id.*

⁴⁸⁴ See MLNEM Loan Modification Agreement, FRB-MLV-0194468 (EC SD Ex. 51).

⁴⁸⁵ See Pavescapes Loan Modification Agreement, FRB-MLV-0194239 (EC SD Ex. 52).

⁴⁸⁶ *Id.*

⁴⁸⁷ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 156:24–157:13,163: 1-21 (“Q: And at any point during the application period did you disclose to Pacific Premier that you had a familiar relationship with Mr. Guerrero? A: · I did not disclose that he was my brother-in-law.· No. Q: Did you disclose that you had any familia[I] relationship with him? A: No.”), 166:13-18, 169:1-14; EC SD Ex. 6 (Statement of Personal Interest (2016)) (among other items, denying having influenced the Bank’s extension of credit to a customer who is her relative) at *476.

⁴⁸⁸ See Benedict Law Loan Modification Agreement, FRBMLV-0194028 (EC SD Ex. 53).

⁴⁸⁹ *Id.*

⁴⁹⁰ EC SD Ex. 24 (Benedict Dep. Transcr.) 37:3– 38:7 (testifying that he cosigned for the mortgage on Ly-Vu’s home to allow her to qualify),146:18-24 – 147:3 (testifying that Ly-Vu was aware of his business relationship with Vu); 83:9-14 (testifying regarding sharing ownership interest of other entities with Vu); EC SD Ex. 16 (Vu Dep.48Transcr.) 12:9-13 (testifying that Ly-Vu and Benedict co-own Ly-Vu’s house), 32:14-24(Benedict “has been a friend, a working partner for over 20 years”).

⁴⁹¹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 145:8-16; EC SD Ex. 6 (Statement of Personal Interest (2016)) (among other items, denying that there were circumstances or any other matters of a personal or family nature that could

The Bank Discovers Payments and Terminates Ly-Vu as a Result of her Conflicts of Interest and her Failure to Disclose Them

197. On October 30, 2017, Regina Sheldon, a Credit Manager who assumed responsibility for the QuickScore loan portfolio from Credit Manager Bushman in early 2017, was reviewing ezMed's line of credit and deposit accounts to determine whether to renew its line of credit for a second twelve-month term.⁴⁹²

198. On that date, ezMed's low account balance of \$115.26 indicated to Credit Manager Sheldon that the company was no longer using PPB as its primary bank, as required.⁴⁹³ Credit Manager Sheldon emailed Ly-Vu and Credit Analyst Yushak, stating: "Please review banking relationship. Borrower deposits do not appear to be consistent with a full banking relationship. Borrower should be informed of non-renewal if banking is not maintained."⁴⁹⁴

199. Ly-Vu responded to Credit Manager Sheldon the following day: "We are his primary bank. The business doesn't have high volume activities. That's why there's not a lot of deposits. Let me know if you need anything else."⁴⁹⁵

200. The same morning, Credit Manager Sheldon replied to Ly-Vu: "Hi Mai, I received your message regarding the low level of business activity. We will need to look at it. If the business activity is that low we might need to adjust the line downward. We will give the account a closer look."⁴⁹⁶

201. On or around December 11, 2017, Credit Manager Sheldon emailed her superior, Vicki Maier, Credit Manager, Director of Credit Process, regarding ezMed: "Hello, I don't know what to do with this information. While looking at a deposit account for a borrower (EZ Med Cloud loan [] 4322) it was noticed that each month there are checks made payable to the RM [Relationship Manager], Mai Ly Vu. Checks are usually in the amount of \$1,500, and have the reference 'contract work' in the memo line. []. The guarantor last name is also Vu."⁴⁹⁷

202. On or around December 18, 2017, Brian Aguirre, First Vice President, Senior Human Resources Business Partner Manager and Steve Arnold, General Counsel, asked Ly-Vu about the payments she had received from ezMed.⁴⁹⁸

203. Shortly thereafter, HR Manager Aguirre summarized the December 18 meeting between himself, General Counsel Arnold, and Ly-Vu in an email to Terri Benkey, BSA Officer, as follows: Steve [Arnold] and I spoke with Mai [Ly-Vu] early last week. We questioned her about the EZ Med account as well as checks written from the account to her. She confirmed the account was owned by her husband. Mai [Ly-Vu] said she did not do any kind of work for the business. She said her husband did write her checks from the business with "repayment of loan"

reasonably be subject to question as to their effect on the interests of the Company); EC SD Ex. 7 (Statement of Personal Interest (2017)) (same).

⁴⁹² See EC SD Ex. 49 (Oct. 2017 Sheldon Email).

⁴⁹³ *Id.* at *084; EC SD Ex. 43 at *029.

⁴⁹⁴ See EC SD Ex. 49 (Oct. 2017 Sheldon Email) at *084.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ Dec. 11, 2017 Sheldon Email, FRB-MLV-0196090 (EC SD Ex. 54) at *091.

⁴⁹⁸ EC SD Ex. 9 (Ingram Decl.) at ¶ 34.

or “contract work” in the memo line for his tax purposes although she used the money for household expenses, bills, etc.⁴⁹⁹

204. On December 18, 2017, the day Ly-Vu spoke with HR Manager Aguirre and General Counsel Arnold, Bank Employee B, a teller and subordinate of Ly-Vu at the Newport Beach branch, changed internal Bank records to remove Ly-Vu as the listed Relationship Manager on ezMed’s deposit account, and replaced Ly-Vu’s initials with those of another Bank employee.⁵⁰⁰ In her comparatively senior role at the Newport Beach branch, Ly-Vu would have had authority to request that Bank Employee B make this change to the ezMed account.⁵⁰¹ BSA Officer Benkey investigated the matter, and held conversations with senior Bank staff in December 2017, but was unable to identify any other individual at the Newport Beach branch or corporate offices who requested that Bank Employee B to make this change.⁵⁰² Bank Employee B is no longer employed by the Bank.⁵⁰³

205. BSA Officer Benkey conducted an internet search on the same day, December 18, and discovered that the “Contact Us” page of ezMed’s website listed a telephone extension for Ly-Vu (“Extension 226 – Mai”).⁵⁰⁴ By the time BSA Officer Benkey conducted the same internet search the following day, however, ezMed had removed the reference to Ly-Vu’s name from its “Contact Us” page, and replaced “Extension 226 – Mai” with “Extension 226 – Christopher.”⁵⁰⁵ Vu testified that he made the website change from “Mai” to “Christopher.”⁵⁰⁶

206. On the morning of January 2, 2018, HR Manager Aguirre and Ly-Vu’s supervisor, Regional Operations Manager Ingram, met with Ly-Vu at the Bank’s Newport Beach branch.⁵⁰⁷ Regional Operations Manager Ingram informed Ly-Vu that the Bank was terminating her for having breached the Code of Conduct by engaging in, and failing to disclose, conflicts of interest related to the ezMed loan, and that her termination was effective on January 3, 2018.⁵⁰⁸

The Bank Suffered a Loss

207. On December 10, 2017, the ezMed line of credit matured and, shortly thereafter, the Bank decided to not renew the line of credit due to the conflict of interest created by Ly-Vu’s relationship to Vu, the loan’s guarantor.⁵⁰⁹

208. The Bank attempted to work with Vu to obtain a repayment plan, but those efforts failed when Ly-Vu refused to authorize Vu to disclose their joint personal tax returns.⁵¹⁰ A Loan Transfer Approval Form prepared by Credit Analyst Yushak and Credit Manager Sheldon summarized the Bank’s dealings with Vu and ezMed as follows: “At maturity, [Vu] was asked by the bank to repay the loan. Vu indicated that he was unable to repay the loan in full and asked

⁴⁹⁹ Dec. 28, 2017 Aguirre Email, FRB-MLV-0196082 (EC SD Ex. 55).

⁵⁰⁰ See EC SD Ex. 45 (ezMed Account Information); EC SD Ex. 56 (Benkey Decl.) ¶¶ 8-9 (Bank records reflect that Bank Employee B made this change).

⁵⁰¹ *Id.* ¶ 10.

⁵⁰² *Id.*

⁵⁰³ *Id.* at ¶ 9.

⁵⁰⁴ Contact Us Page, FRB-MLV-0195864 (EC SD Ex. 57); EC SD Ex. 56 (Benkey Decl.) ¶ 12.

⁵⁰⁵ EC SD Ex. 57 (Contact Us Page); EC SD Ex. 56 (Benkey Decl.) ¶ 13.

⁵⁰⁶ EC SD Ex. 16 (Vu Dep. Transcr.) 88:5-10.

⁵⁰⁷ EC SD Ex. 9 (Ingram Decl.) ¶ 37.

⁵⁰⁸ EC SD Ex. 9 (Ingram Decl.) ¶ 37; EC SD Ex. 1 (Termination Letter); Answer at ¶ 41.

⁵⁰⁹ EC SD Ex. 36 (Loan Transfer Approval Form).

⁵¹⁰ *Id.*

if a repayment plan could be arranged. The Bank advised that they would explore options; and needed to obtain tax returns and a signed pre-negotiation agreement. Initially the borrower proposed to provide the requested items. Following multiple broken promises to provide the documentation, the borrower was contacted by the Collections department. Again he was initially cooperative, but since has informed the bank that [Ly-Vu] will not authorize the release of their joint personal tax return. . . .”⁵¹¹

209. On March 29, 2018, the Bank charged off the full principal balance of the loan: \$49,685.⁵¹² On April 30, 2018, the Bank notified Vu that it was closing ezMed’s deposit account with PPB, effective June 1, 2018.⁵¹³

210. On May 22, 2018, the Bank filed a complaint against Vu and ezMed in the Superior Court of the State of California, seeking \$56,930 in damages for their failure to pay the amounts due under the terms of ezMed’s loan agreement.⁵¹⁴ In addition to the charge-off amount, the Bank had incurred additional losses, including \$4,091 in unpaid interest and \$3,154 in fees and costs attendant to the Bank’s attempt to obtain repayment.⁵¹⁵ In total, the Bank experienced a loss of at least \$56,930 in connection with the ezMed loan.⁵¹⁶

211. On August 3, 2018, the court entered a default judgment against Vu and ezMed, ordering them to pay \$56,930.25 to the Bank.⁵¹⁷ To date, neither Vu nor ezMed has paid any portion of that amount to the Bank and Vu has testified that, as of January 2020, neither he nor ezMed intended to make any payment to the Bank pursuant to the judgment.⁵¹⁸

Order Granting Partial Summary Disposition

By presenting sufficient evidence through their Motion, Enforcement Counsel are entitled to summary disposition on all issues raised in their Memorandum of Points and Authorities, with the exception of (1) whether Respondent knowingly presented herself as the Chief Financial Officer for ezMed Cloud, Inc., as is reflected in that company’s California Statement of Information filed on January 13, 2016;⁵¹⁹ (2) whether Respondent was the person who altered the Modified Loan Application (EC SD Ex. 35);⁵²⁰ (3) whether Respondent had acquired an interest in that company as would have required disclosure to the Bank;⁵²¹ and (4) whether Respondent expected that Vu and ezMed would use loan proceeds for her personal benefit.

Pursuant to FRB Uniform Rule 12 C.F.R. § 19.30 (Partial Summary Disposition), a hearing on these remaining four issues is ordered. All claims, including those determined

⁵¹¹ *Id.*

⁵¹² EC SD Ex. 56 (Benkey Decl.) ¶ 17; Charge-Off Memorandum, FRB-MLV-0196101 (EC SD Ex. 58).

⁵¹³ See Notification of Closure, FRB-MLV-0196095 (EC SD Ex. 59).

⁵¹⁴ See Case Summary, Pacific Premier Bank v. ezMed Cloud, Inc., No. 30-2018-00994340 (Aug. 3, 2018), FRB-MLV-0195488 (EC SD Ex. 60) at *489-90 & *493-494.

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*; see also EC SD Ex. 56 (Benkey Decl.) ¶ 18.

⁵¹⁷ See Judgement, Pacific Premier Bank v. ezMedCloud, Inc., No. 30-2018-00994340 (Aug. 3, 2018), FRB-MLV-0195510 (EC SD Ex. 61).

⁵¹⁸ EC SD Ex. 16 (Vu Dep. Transcr.) ¶ 75:12–76:4; EC SD Ex. 56 (Benkey Decl.) ¶ 19.

⁵¹⁹ See Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at ¶ 63.

⁵²⁰ See *id.* at ¶ 96.

⁵²¹ See *id.* at ¶ 163.

through the present Order, shall be addressed in the recommended decision filed at the conclusion of the hearing.

Order Regarding the Evidentiary Hearing Set for December 1, 2020

The scope of the hearing to be held on December 1, 2020 shall be limited to whether Respondent knowingly presented herself as the Chief Financial Officer for ezMed Cloud, Inc., as is reflected in that company's California Statement of Information filed on January 13, 2016; whether Respondent was the person who altered the Modified Loan Application (EC SD Ex. 35); whether Respondent had acquired an interest in that company as would have required disclosure to the Bank; and whether Respondent expected that Vu and ezMed would use loan proceeds for her personal benefit.

Enforcement Counsel filed a prehearing statement on October 1, 2020, accompanied by a statement describing the disputed issues and 22 exhibits. The parties also jointly submitted 55 joint exhibits. Respondent did not file a prehearing statement and identified no witnesses for this hearing.

By not later than November 6, 2020, Enforcement Counsel shall file a supplemental prehearing statement identifying any exhibit that will be presented, and identifying those witnesses who will be testifying, the scope of their anticipated testimony, and the exhibits (with reference to page numbers) that each witness will be presented.

As Respondent failed to timely offer exhibits besides those that were jointly offered, and failed to identify any witnesses within the time permitted, she will not be permitted to offer exhibits other than those jointly identified in the original prehearing submission, and will not be permitted to present the testimony of any witness other than herself. By not later than November 6, 2020, Respondent shall file a prehearing statement identifying the scope of her anticipated testimony and the exhibits (with reference to page numbers) that she will refer to during the hearing. Should she fail to timely do so, Respondent will not be permitted to testify during the hearing.

By not later than November 6, 2020, the parties may jointly or separately identify those jointly submitted exhibits they intend to rely on during the hearing.

Prehearing motions, including motions *in limine*, shall be timely if filed by November 16, 2020; responses to such motions shall be timely if filed by November 23, 2020.

SO ORDERED.

Date: October 23, 2020

Christopher B. McNeil
Administrative Law Judge
Office of Financial Institution Adjudication

CERTIFICATE OF SERVICE

On October 23, 2020, I served the foregoing Order Regarding Enforcement Counsel’s Motion for Summary Disposition by electronic mail upon:

Board of Governors of the Federal Reserve System
Office of the Executive Secretary
OSEC-Litigation@frb.gov

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