

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of) ELLER HERNANDEZ,) Former Employee and) Institution-Affiliated Party) of) CALIFORNIA FEDERAL BANK, A F.S.B.) San Francisco, California.))) OTS Order No. <u>SF-97-008</u> Dated: <u>March 24, 1997</u>
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STIPULATION AND CONSENT TO
ISSUANCE OF AN ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Eller Hernandez ("HERNANDEZ"), a former employee and institution-affiliated party of California Federal Bank, a F.S.B. ("CalFed" or "the Association"), OTS No. 5099, that the OTS is of the opinion that the grounds exist to initiate an administrative prohibition proceeding against HERNANDEZ pursuant to 12 U.S.C. § 1818(e)¹; and

WHEREAS, HERNANDEZ desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

¹All references in this Stipulation and Consent and the Order of Prohibition to the U.S.C. are as amended.

1. Jurisdiction.

(a) CalFed, at all times relevant hereto, was a "savings association" within the meaning of 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, CalFed is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) HERNANDEZ, as a former employee of CalFed, is deemed to be an "institution-affiliated party" as that term is defined in (12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

(c) Pursuant to 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against institution-affiliated parties. Therefore, HERNANDEZ is subject to the authority of the OTS to initiate and maintain cease and desist and prohibition proceedings against him pursuant to 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. The OTS finds during 1995, HERNANDEZ, without authorization, misapplied \$7,890 of the funds of CalFed depositors to his own use. As a result of his actions, HERNANDEZ (1) engaged in a violation of the law or breached his fiduciary duty to CalFed; and (2) CalFed suffered a financial loss or he received a financial benefit or other gain; and (3) the violation of law or breach of fiduciary duty demonstrated personal dishonesty or a willful and/or continuing disregard by HERNANDEZ for the safety and soundness of CalFed.

3. Consent. HERNANDEZ consents to the issuance by the OTS of the accompanying Order of Prohibition ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued by the OTS under the authority of 12 U.S.C. § 1818(e). Upon its issuance by the Regional Director or designee for the West Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers. HERNANDEZ waives the following:

(a) the right to be served with a written notice of the OTS's charges against him (referred to as a Notice of Intention to Prohibit);

(b) the right to an administrative hearing of the OTS's charges against him; and

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

6. Indemnification. HERNANDEZ shall neither cause nor permit CalFed (or any successor institution, holding company, subsidiary, or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to the negotiation and issuance of the Order. Nor shall HERNANDEZ obtain any indemnification (or other reimbursement) from the Association (or any successor institution, holding company, subsidiary, or service corporation

thereof) with respect to such amounts. Any such payments received by or on behalf of HERNANDEZ in connection with this action shall be returned to CalFed (or any successor institution, holding company, subsidiary, or service corporation thereof).

7. Other Government Actions Not Affected.

(a) HERNANDEZ acknowledges and agrees that the consent to the entry of the Order is for the purposes of resolving this prohibition action only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of HERNANDEZ that arise pursuant to this action or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation, HERNANDEZ agrees that he will not assert this proceeding, his consent to the entry of the Order, and/or the entry of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other Federal or state governmental entity.

8. Acknowledgment of Criminal Sanctions. HERNANDEZ acknowledges that 12 U.S.C. § 1818(j), sets forth criminal penalties for knowing violations of this Order.

9. Agreement for Continuing Cooperation. HERNANDEZ agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, he will provide whatever discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to

CalFed, its holding companies, its subsidiaries, and its institution-affiliated parties, except that HERNANDEZ does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If HERNANDEZ invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., HERNANDEZ agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

WHEREFORE, HERNANDEZ executes this Stipulation and Consent to Issuance of an Order of Prohibition, intending to be legally bound hereby.

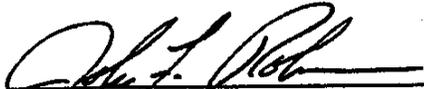
By:



ELLER HERNANDEZ

Accepted by:

Office of Thrift Supervision



John F. Robinson
Regional Director
West Region

Date: 3-19-97

Date: March 24, 1997

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State of CALIFORNIA)

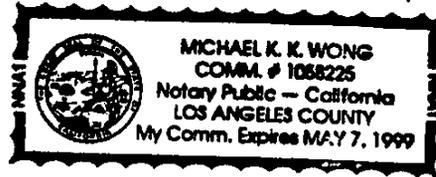
County of LOS ANGELES)

On this 19TH day of MARCH, 1997, before me, the undersigned notary public, personally appeared ELLER HERNANDEZ and acknowledged his execution of the foregoing STIPULATION AND CONSENT TO ISSUANCE OF AN ORDER OF PROHIBITION.

Michael K. Wong
Notary Public

My commission expires:

May 7, 1999



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UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
ELLER HERNANDEZ,)
Former Employee and)
Institution-Affiliated Party)
of)
CALIFORNIA FEDERAL BANK, A F.S.B.)
San Francisco, California.)
_____)

OTS Order No. SF-97-008
Dated: March 24, 1997

ORDER OF PROHIBITION

WHEREAS, Eller Hernandez ("HERNANDEZ") has executed a Stipulation and Consent to Entry of an Order of Prohibition ("Stipulation") on March 19, 1997; and

WHEREAS, HERNANDEZ, by his execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition ("Order") by the Office of Thrift Supervision ("OTS"), pursuant to 12 U.S.C. § 1818(e); and

NOW THEREFORE, IT IS ORDERED that:

1. HERNANDEZ is prohibited from further participation, in any manner, in the conduct of the affairs of California Federal Bank, a F.S.B. ("CalFed"), and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. HERNANDEZ is and shall be subject to the statutory prohibitions provided by 12 U.S.C. § 1818(e). Due to and without limitation on the operation of 12 U.S.C. § 1818(e)(6) and 1818(e)(7), HERNANDEZ, except upon the prior written consent of

the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(A) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or any agency specified in 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), including:

(i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, state banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;

(iii) any insured credit union under the Federal Credit Union Act (12 U.S.C. §§ 1751 et seq.);

(iv) any institution chartered under the Farm Credit Act of 1971 (12 U.S.C. §§ 2001 et seq.);

(v) any appropriate Federal depository institution regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(A)(v); and

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank; and

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any Covered Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q); or

(D) vote for a director, or serve or act as an "institution-affiliated party, as defined in 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling shareholder of, or agent for, an insured depository institution.

3. The Stipulation is made a part hereof and is incorporated herein by this reference.

4. This Order is subject to the provisions of 12 U.S.C. § 1818(j), and shall become effective on the date it is issued.

5. HERNANDEZ shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

6. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

THE OFFICE OF THRIFT SUPERVISION
By:



John F. Robinson
Regional Director
West Region

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