

**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

**RECOMMENDED FINDINGS OF FACT, RECOMMENDED CONCLUSIONS OF LAW,
AND RECOMMENDED DECISION WITH PROPOSED ORDER**

Mai Ly-Vu, formerly associated with Pacific Premier Bank, Irvine, California, is the Respondent in this administrative enforcement action.

In a Notice of Intent, the Board of Governors of the Federal Reserve System alleged that 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.¹ The Board alleged that from this conduct, Respondent received at least \$18,700, and the Bank suffered a loss of at least \$56,930 or other damage and reputational harm.²

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.³ 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.⁴

Upon these allegations, the Board proposed issuing an order that would prohibit Respondent from engaging in regulated banking activity.⁵ Further, the Board 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.⁶

¹ 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.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *Id.*

Through her Answer, Respondent denied that she engaged in unsafe or unsound practices, and denied knowingly breaching any fiduciary duty she owed to the Bank.⁷ 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 she did so in an open way, with no attempt to conceal the transaction.⁸ 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.⁹

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.”¹⁰ Averring further 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.¹¹ 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.¹²

After a period during which the parties were provided the opportunity to discover documents and information maintained by the opposing party, Enforcement Counsel moved for summary disposition of all issues and claims.¹³ Accompanying their 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 their favor.¹⁴

On September 8, 2020, Respondent timely filed a response in opposition to the Motion.¹⁵ Accompanying Respondent’s response was her statement identifying facts that Respondent avers are both material and disputed, along her sworn Declaration and thirteen exhibits.¹⁶

Through the summary disposition proceeding, I found substantial and uncontroverted evidence supported most of the charges.¹⁷ Because the parties’ contentions and supporting

⁷ 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.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 2-3.

¹³ Enforcement Counsel’s Motion for Summary Disposition, dated August 17, 2020.

¹⁴ Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition, dated August 17, 2020.

¹⁵ 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.

¹⁶ Respondent’s Exhibits A through M, filed September 8, 2020.

¹⁷ Order Regarding Enforcement Counsel’s Motion for Summary Disposition, issued October 23, 2020.

evidence were addressed through their summary disposition submissions, the contents of the Order regarding Enforcement Counsel's Motion for Summary Disposition are incorporated herein by this reference, as if fully rewritten here.

Upon the record that the parties created through the summary disposition process, I found the uncontroverted and preponderant evidence established that, with four exceptions, Enforcement Counsel's presentation of what they assert are uncontroverted facts are sufficiently established in the record to support their Motion. The four exceptions concerned 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;¹⁸ whether Respondent was the person who altered ezMed Cloud Inc.'s Modified Loan Application;¹⁹ whether Respondent had acquired such an interest in that company as would have required disclosure to the Bank;²⁰ and whether Respondent expected that her husband, Michael Vu, and ezMed would use loan proceeds for her personal benefit.

Summary disposition can be granted only upon uncontroverted factual claims. Here, Respondent's state of mind regarding the 2016 California Statement of Information could not be determined without determining the credibility of her response to the factual claims presented by Enforcement Counsel, and as such could not be determined through the summary disposition process. In addition, evidence presented through the Summary Disposition Motion and Response established a factual controversy regarding Respondent's role in submitting to the Bank the Modified Loan Application. Similarly, whether or not Respondent had an interest in ezMed, at least an interest sufficient to give rise to fiduciary obligations to disclose such interest to the Bank, depended in part on weighing controverted evidence. Last, 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 were material to the issues and claims raised by the Notice of Intent and Respondent's Answer thereto, answers to these questions had to be determined through an evaluation of the testimony and documentary evidence that was presented during a hearing conducted on December 1, 2020. The findings, conclusions, and recommended decision that follow are based on that evidence and the evidence presented by the parties through the summary disposition process.²¹

¹⁸ See Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at ¶63.

¹⁹ See *id.* at ¶96; (EC SD Ex. 35).

²⁰ See *id.* at ¶163.

²¹ By an Order issued on December 28, 2020, the parties were advised that this Tribunal had received the transcript of the hearing conducted on December 1, 2020. See Notice Regarding Errata Submission and Post-Hearing Briefs, at 1. Pursuant to 12 C.F.R. § 263.37(a), post-hearing submissions, including post-hearing briefs, would be timely if filed within 30 days following the service of this Notice (thus, January 27, 2021). On January 27, 2021, Enforcement Counsel filed their Post-Hearing Brief, accompanied by their Statement of Facts and Conclusions of Law and a Proposed Order. Respondent elected not to make any post-hearing submissions.

Contents

Jurisdiction	6
Respondent’s Personal and Financial Interests in ezMed	8
The Role of the Bank’s Employee Handbook and Code of Business Conduct and Ethics 8	
Respondent’s Role Regarding the 2016 and 2017 Statements of Personal Interest in Company 4 (ezMed)	8
Uncontroverted Facts Established through Enforcement Counsel’s Statement of Undisputed Facts and Respondent’s Response	9
The PPB Code of Conduct Prohibited Conflicts of Interest	9
Respondent’s Positions and Responsibilities	11
Branch Service Manager Responsibilities	12
Premier Deposit Officer Responsibilities	12
Relationship Manager Responsibilities	13
QuickScore Loan Program	14
ezMed Cloud, Inc.	15
Respondent’s Personal and Financial Interests in ezMed	16
Respondent’s husband (Vu) held ownership interest in ezMed	16
Controverted Fact #1: Respondent was identified as ezMed’s Chief Financial Officer in its public corporate filings	18
Respondent Helped ezMed Obtain a Loan	30
Controverted Fact #2: Respondent altered ezMed’s Loan Application	34
EzMed Made Payments to Respondent with Funds from the Line of Credit	37
Payment 1: \$3,000 payment to Respondent for household expenses	37
Payment 2: \$5,000 payment to Respondent in repayment of loan	38
Payment 3: \$1,500 payment to Respondent for household expenses	38
Payment 4: \$2,000 payment to Respondent for household expenses (and additional activity on ezMed’s line of credit)	39
Payment 5: \$1,200 payment to Respondent for household expenses	40
Payments 6-9: \$6,000 in payments to Respondent for household expenses	40
Respondent Concealed Material Information from the Bank	41
Respondent did not disclose that the owner of ezMed was her husband or that she had been identified as ezMed’s Chief Financial Officer	42
Respondent did not disclose that Vu paid and was expected to continue paying Respondent for household expenses from ezMed’s account	43
Respondent did not disclose that ezMed was indebted to Respondent as a result of loans Respondent had made to the company	44

Respondent did not disclose that ezMed used funds from the line of credit to make payments to her (for household expenses and loan repayments).	46
Controverted Fact #3: Respondent did not disclose that she acquired or claimed an ownership interest in ezMed and financially benefitted from that ownership (actual or claimed)	46
Respondent did not disclose accurate information about, or correct false information on, the loan application	48
Respondent did not disclose to PPB that the loan proceeds would be used for nonbusiness expenses in violation of the Loan Agreement	48
Respondent did not disclose that Vu had been convicted of a felony	49
Respondent made false statements to the Bank in certifications required by the Code of Conduct regarding her conflicts of interest	50
Controverted Fact #4: Respondent expected that Vu and ezMed would use loan proceeds for her personal benefit	51
Respondent’s Other Conflicts of Interest Involving Family and Friends	53
The Bank Discovers Payments and Terminates Respondent as a Result of her Conflicts of Interest and her Failure to Disclose Them	54
The Bank Suffered a Loss	56
DISPOSITIVE CONCLUSIONS OF LAW	57
RECOMMENDED ORDER	59

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 (the Bank).²² 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.²³

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).²⁴ The pleadings also establish that the material period for purposes of the Notice of Intent is January 1, 2015 through January 15, 2018.²⁵

²² *Id.* at ¶1.

²³ *Id.* at ¶¶2, 11.

²⁴ *Id.*

²⁵ *Id.* at ¶3.

Jurisdiction

Finding of Fact No. 1: Respondent Mai Ly-Vu was an employee of Pacific Premier Bank (“PPB” or the “Bank”) from December 2014 until her termination in January 2018.²⁶

Finding of Fact No. 2: PPB is, and was at all relevant times, a state member bank.

Conclusion of Law No. 1: 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.²⁷

Conclusion of Law No. 2: As an employee of PPB during the relevant period, Respondent 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.²⁸

Facts Regarding Respondent’s Role at the Bank

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.²⁹

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

The initial pleadings also establish 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.³² Company 3 is another company owned by Respondent’s Brother-in-Law B.³³ 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.³⁴ The initial pleadings also establish that in June 2016, Respondent brought to the Bank Brother-in-

²⁶ See Ly-Vu Answer (Nov. 6, 2019) ¶¶ 11, 41, Termination Letter (Jan. 2, 2018), FRB-MLV-0196216 (EC SD Ex.1).

²⁷ See 12 U.S.C. §§ 1813(q)(3)(A) and 1818(b)(3).

²⁸ See 12 U.S.C. §§ 1813(u), 1818(b)(3) and 1818(e)(3).

²⁹ Ly-Vu Answer at ¶13.

³⁰ *Id.* at ¶14.

³¹ *Id.* at ¶15.

³² *Id.* at ¶19.

³³ *Id.*

³⁴ *Id.*

Law B's application for a \$25,000 increase in the line of credit, bringing the total to \$50,000.³⁵ Respondent has averred that she was not otherwise involved with the processing, underwriting, or approval of this line of credit.³⁶

The initial pleadings establish 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.³⁷ The pleadings establish that the Bank approved the line of credit application in December 2016, and that Company 4 was wholly owned by Respondent's husband, Michael Vu.³⁸

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 January 29, 2020 deposition 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."³⁹

Finding of Fact No. 3: The Bank's 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.⁴⁰

Finding of Fact No. 4: The Bank relies on Relationship Managers to serve as the primary channel of communication between the Bank and credit applicants.⁴¹

Finding of Fact No. 5: In this role, Relationship Managers collect application materials and credit-related documents, and liaise between the applicant/borrower and Bank's credit analysts, loan underwriters, and processors.⁴²

Finding of Fact No. 6: 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.⁴³

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at ¶22.

³⁸ *Id.* at ¶¶23, 28, 32.

³⁹ Enforcement Counsel's Summary Disposition Exhibit (EC SD Ex.) 11 (Ly-Vu Dep. Transcr.) at 35.

⁴⁰ 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).

⁴¹ 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").

⁴² 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).

⁴³ 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.").

Finding of Fact No. 7: 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,” the Bank’s “Business Bankers” can also act as the point of contact between the credit analyst and current or potential borrowers.⁴⁴

Finding of Fact No. 8: 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.⁴⁵

Finding of Fact No. 9: During the relevant period, Respondent was the Relationship Manager for Company 4, ezMed Cloud, Inc.

Respondent’s Personal and Financial Interests in ezMed

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

The Bank’s policies that are included in the Employee Handbook and the Code of Business Conduct and Ethics are referred to here as the Bank’s Code of Conduct.⁴⁶ 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 the employee[’s] . . . judgment in the performance of his/her responsibilities.”⁴⁷ Conflicts of interest are prohibited as a matter of Bank policy and have been so since at least 2015.⁴⁸

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.⁴⁹

Respondent’s Role Regarding the 2016 and 2017 Statements of Personal Interest in Company 4 (ezMed)⁵⁰

In her Answer, Respondent averred that she was not aware of signing or submitting a Statement of Personal Interest in ezMed in 2016;⁵¹ denied knowledge of any Statement of Information being filed with the California Secretary of State that identified Respondent as ezMed’s Chief Financial Officer;⁵² denied knowledge of submitting a second Statement of

⁴⁴ 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.

⁴⁵ EC SD Ex. 4 (Bushman Decl.) ¶ 28.

⁴⁶ *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).

⁴⁷ *Id.* at ¶ 30, citing EC SD Ex. 2 (Code of Conduct (2015) at *468.

⁴⁸ *Id.* at ¶ 31, citing EC SD Ex. 2 (Code of Conduct (2015) at *469.

⁴⁹ *Id.* at ¶ 36, citing EC SD Ex. 2 (Code of Conduct (2015) at *468.

⁵⁰ 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.

⁵¹ Respondent’s Answer at ¶33.

⁵² *Id.* at ¶ 32.

Personal Interest in September 2017 that was nearly identical to the one submitted in 2016,⁵³ or of any written representations of any filing made by her husband, Michael Vu; and denied that she served as ezMed's CFO or had any interest, control, decision making, or day-to-day input on ezMed's operations.⁵⁴ Further, Respondent denied the averment that she did not disclose to the Bank that Michael Vu was her husband and owned ezMed, although the Answer was silent regarding when, to whom, and how she made such disclosures.⁵⁵

In her Answer, Respondent averred that once a line of credit was approved (as was the case with ezMed in December 2016), the Bank would add the line of credit to the borrower's online banking, such that at this point ezMed was able to advance and make payments directly through the Bank's online banking system without any additional authorization.⁵⁶ She denied giving payment authorization to any of ezMed's employees.⁵⁷

Respondent agreed that she received \$18,700,⁵⁸ averring in her Answer however that she was unaware of source of the payments⁵⁹ and could not determine if ezMed was, as is alleged in the Notice, the source of such repayment.⁶⁰ She also averred that she was unaware of ezMed's accounting practices or its day-to-day operations,⁶¹ but averred, "the checks were payments to repay loans that Respondent had made to her husband,"⁶² and that by this time Respondent "had lent over \$12,000 to her husband from January 21, 2015 through July 29, 2016."⁶³

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.

The PPB Code of Conduct Prohibited Conflicts of Interest

Finding of Fact No. 10: During the relevant period (since at least 2015 through 2017), the Bank's Code of Business Conduct and Ethics (the "Code of Conduct") prohibited conflicts of interest as a matter of Bank policy.⁶⁴

Finding of Fact No. 11: 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

⁵³ *Id.* at ¶ 34.

⁵⁴ *Id.* at ¶¶ 25-26, 39-40.

⁵⁵ *Id.* at ¶ 27.

⁵⁶ *Id.* at ¶ 29.

⁵⁷ *Id.*

⁵⁸ *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.

⁵⁹ *Id.* at ¶ 30.

⁶⁰ *Id.* at ¶ 31.

⁶¹ *Id.* at ¶ 30.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 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).

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.”⁶⁵

Finding of Fact No. 12: 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.”⁶⁶

Finding of Fact No. 13: 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].”⁶⁷ 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.”⁶⁸

Finding of Fact No. 14: 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[.]”⁶⁹

Finding of Fact No. 15: 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.”⁷⁰

Finding of Fact No. 16: 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.”⁷¹

Finding of Fact No. 17: 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.”⁷²

Finding of Fact No. 18: 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.”⁷³

Finding of Fact No. 19: 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.⁷⁴

⁶⁵ EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex.3 (Code of Conduct (2016-2017)) at *479.

⁶⁶ EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex.3 (Code of Conduct (2016-2017)) at *479.

⁶⁷ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex.3 (Code of Conduct (2016-2017)) at *480.

⁶⁸ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

⁶⁹ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

⁷⁰ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

⁷¹ EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *479.

⁷² EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *479.

⁷³ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

⁷⁴ EC SD Ex. 2 (Code of Conduct (2015)) at *468, 475; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *479, 485.

Finding of Fact No. 20: Unless asked for additional information by the underwriting or processing departments of the Bank, Respondent was not involved in the underwriting or processing of a loan application once she delivered the application to the Bank.

Finding of Fact No. 21: 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[.]”⁷⁵

Conclusion of Law No. 3: The Code of Conduct applied to Respondent during the entire period of her employment by the Bank.⁷⁶

Finding of Fact No. 22: On or around December 18, 2014, November 29, 2016, and September 5, 2017, Respondent signed annual certifications affirming that she had read, understood, and agreed to comply with the Code of Conduct then operative.⁷⁷ Respondent also certified that she had read, understood, and agreed to comply with each version of the Code of Conduct during the relevant period.⁷⁸

Finding of Fact No. 23: As a Branch Service Manager, Respondent was required to participate in all Bank compliance trainings regarding, and to abide by and enforce, the Code of Conduct.⁷⁹

Respondent’s Positions and Responsibilities

Finding of Fact No. 24: In December 2014, PPB hired Respondent as Branch Manager of the Bank’s branch in Tustin, California.⁸⁰

Finding of Fact No. 25: In June 2015, Respondent was promoted to Regional Banking Officer, and four months later, in October 2015, was named Regional Banking Manager.⁸¹

Finding of Fact No. 26: In January 2016, Respondent 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.⁸²

Finding of Fact No. 27: When the Orange branch closed in January 2017, Respondent was transferred to the Newport Beach, California, branch and assumed the position of Premier Deposit Officer.⁸³

⁷⁵ EC SD Ex. 2 (Code of Conduct (2015)) at *469; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *480.

⁷⁶ See EC SD Ex. 2 (Code of Conduct (2015)) at *468; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *479.

⁷⁷ 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).

⁷⁸ See EC SD Ex. 2 (Code of Conduct (2015)) at *475; EC SD Ex. 3 (Code of Conduct (2016-2017)) at *485.5.

⁷⁹ See Branch Service Manager Job Summary, FRB-MLV-0195450 (EC SD Ex. 8) at *451; Decl. of Barbara Ingram ¶ 29 (EC SD Ex. 9).

⁸⁰ 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.

⁸¹ Answer ¶ 12; Personnel Records, FRB-MLV-0196201 (EC SD Ex. 12) at *205-206.

⁸² Answer ¶ 12; EC SD Ex. 12 (Personnel Records) at *203-204.

⁸³ Answer ¶ 12; EC SD Ex. 12 (Personnel Records) at *201.

Finding of Fact No. 28: Respondent held the title of “Vice President” in each of her positions at PPB.⁸⁴

Branch Service Manager Responsibilities

Finding of Fact No. 29: 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.⁸⁵ As a Branch Service Manager, Respondent 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.⁸⁶ Respondent 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.⁸⁷ From October 2016 to January 2018, Respondent reported directly to Barbara Ingram, who was then Regional Operations Manager.⁸⁸

Finding of Fact No. 30: During the 2016-2017 period, Branch Service Managers held a range of duties and responsibilities, including: 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.⁸⁹

Finding of Fact No. 31: 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.⁹⁰

Premier Deposit Officer Responsibilities

Finding of Fact No. 32: As a Premier Deposit Officer, Respondent was responsible for opening accounts and managing deposits, assisting clients with cash management needs, selling treasury products, and overseeing remote deposit scanning and wire services.⁹¹ The Premier Deposit Officer role was sales-focused; whereas, the Branch Service Manager position was operations-focused.⁹² Respondent, however, viewed her change in title from Branch Service Manager to Premier Deposit Officer as a “lateral move,” as she maintained many of the

⁸⁴ EC SD Ex. 12 (Personnel Records) at *201-206.

⁸⁵ See EC SD Ex. 9 (Ingram Decl.) ¶ 9.

⁸⁶ *Id.* ¶¶ 9, 10.

⁸⁷ *Id.* ¶¶ 8-10.

⁸⁸ *Id.* ¶¶ 7, 8.

⁸⁹ 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, and supervising and training branch staff on the bank system, opening new accounts, opening and closing procedures of branch and running daily reports.”).

⁹⁰ 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”).

⁹¹ EC SD Ex. 9 (Ingram Decl.) ¶ 14; Premier Deposit Officer Description (2016), FRB-MLV-0195453 (EC SD Ex. 13) at *453-54.

⁹² EC SD Ex. 9 (Ingram Decl.) ¶ 14.

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.”⁹³

Relationship Manager Responsibilities

Finding of Fact No. 33: The Bank’s Relationship Managers were 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.⁹⁴

Finding of Fact No. 34: The Bank relied on Relationship Managers to serve as the primary channel of communication between the Bank and credit applicants.⁹⁵ In this role, Relationship Managers collected application materials and credit-related documents, and served as liaisons between the applicant/borrower and credit analysts and loan underwriters and processors.⁹⁶

Finding of Fact No. 35: The Bank’s Relationship Managers had 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.⁹⁷

Finding of Fact No. 36: 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.⁹⁸

Finding of Fact No. 37: Like “Relationship Managers,” the Bank’s “Business Bankers” would also act as the point of contact between the Credit Analyst and current or potential borrowers. While the qualifications for these positions were different (*e.g.*, Business Bankers were generally junior employees compared to Relationship Managers and often required more supervision and training), the two positions sometimes would be referenced in similar contexts.⁹⁹

⁹³ EC SD Ex. 11 (Ly-Vu Dep. Transcr.)32:8-19.

⁹⁴ 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).

⁹⁵ 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”).

⁹⁶ 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).

⁹⁷ 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.”).

⁹⁸ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 33:17-21 (Q: “Did you also serve as [a] relationship manager?” A: “Title-wise, no, I9did 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.

⁹⁹ EC SD Ex. 4 (Bushman Decl.) ¶ 28.

QuickScore Loan Program

Finding of Fact No. 38: 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.¹⁰⁰ The QuickScore program was generally intended to provide small business loans.¹⁰¹

Finding of Fact No. 39: During that period, standard QuickScore lines of credit ranged from \$25,000 to \$50,000, and typically included a twelve-month term.¹⁰² In the month or so prior to their termination, the Bank reviewed the loans, at which time they may be called due, modified, or renewed for another twelve-month term.¹⁰³

Finding of Fact No. 40: The application process for QuickScore loans was streamlined.¹⁰⁴ Applicants typically worked with a Relationship Manager at the Bank to prepare a written loan application.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸ Credit Administrators were generally responsible for making the final loan approval determination.¹⁰⁹

Finding of Fact No. 41: 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 arose regarding the accuracy or completeness of the credit report or the legitimacy of an applicant’s business or its principals.¹¹⁰ Relationship Managers typically assisted Credit Analysts in collecting any such additional information from an applicant and its principals and guarantors.¹¹¹

Finding of Fact No. 42: Pursuant to the Bank’s Credit Policy applicable to QuickScore loan products, the Bank considered several factors when 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.¹¹²

¹⁰⁰ EC SD Ex. 4 (Bushman Decl.) ¶ 10.

¹⁰¹ *Id.* ¶ 10.

¹⁰² *Id.* ¶ 12.

¹⁰³ *Id.*

¹⁰⁴ *Id.* ¶ 13.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* ¶ 17.

¹¹¹ *Id.*

¹¹² *Id.* ¶ 19.11.

Finding of Fact No. 43: 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.”¹¹³ 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.¹¹⁴

Finding of Fact No. 44: To make an informed assessment of an applicant’s business activity, the Bank needed a good understanding of business revenues and debt service obligations to determine whether the requested loan amount was reasonable.¹¹⁵ 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.¹¹⁶

Finding of Fact No. 45: 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.¹¹⁷

Finding of Fact No. 46: The credit scores of an applicant and its principals and guarantors were given weight in the approval decision, but were not determinative of the Bank’s lending decision.¹¹⁸ 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.¹¹⁹

Finding of Fact No. 47: Felony convictions of a principal and guarantor, for example, may trigger credibility questions that would have factored into the Bank’s credit determination.¹²⁰

Finding of Fact No. 48: 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.¹²¹

Finding of Fact No. 49: Disclosing the identity of the borrower’s principals was an important part of the credit application.¹²²

EzMed Cloud, Inc.

Finding of Fact No. 50: ezMed Cloud, Inc. (“ezMed”) is an S-corporation that was incorporated by Michael D. Vu in the State of California on January 6, 2014.¹²³

¹¹³ Credit Policy (2016), FRBMLV-0195677 (EC SD Ex. 14) at *769; see also EC SD Ex. 4 (Bushman Decl.) ¶ 20.

¹¹⁴ *Id.*

¹¹⁵ *Id.* ¶ 20.

¹¹⁶ *Id.* ¶ 20.

¹¹⁷ *Id.* ¶ 20; see also EC SD Ex. 14 (Credit Policy (2016)), at *769.

¹¹⁸ EC SD Ex. 4 (Bushman Decl.) at ¶ 22.

¹¹⁹ *Id.* at ¶ 22.

¹²⁰ *Id.* at ¶ 22.12.

¹²¹ *Id.* at ¶ 18.

¹²² *Id.* ¶ 23.

¹²³ 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.

Finding of Fact No. 51: ezMed is an online marketing directory for residential care facilities for the elderly in California.¹²⁴

Finding of Fact No. 52: Since at least January 2016, Vu has been a director and executive officer ezMed.¹²⁵

Finding of Fact No. 53: Vu has served as ezMed's President and Chief Executive Officer since January 2016 and as the company's Secretary since December 2016.¹²⁶

Finding of Fact No. 54: 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. § 2314.¹²⁷ Vu was sentenced to 37 months in prison.¹²⁸

Respondent's Personal and Financial Interests in ezMed

Respondent's husband (Vu) held ownership interest in ezMed

Finding of Fact No. 55: Respondent and Vu have been legally married since approximately 1996.¹²⁹

Finding of Fact No. 56: Since the date of its incorporation, ezMed has not formally issued any shares of stock or stock certificates.¹³⁰

Finding of Fact No. 57: Respondent has testified that Vu is and was during the relevant period the sole owner of ezMed.¹³¹ Respondent's brothers-in-law also described ezMed as Vu's company during their depositions.¹³² Additionally, in multiple documents he provided to PPB through Respondent during the loan application process Vu represented that he was the sole shareholder of ezMed in 2016.¹³³

Finding of Fact No. 57: According to deposition testimony, Vu and Alex Benedict, a friend of Respondent 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.¹³⁴ Vu similarly testified that Benedict owns and has owned a percentage of ezMed, as indicated by the Schedule K-1s ezMed issued to the

¹²⁴ 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.

¹²⁵ 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).

¹²⁶ EC SD Ex. 17 (January 2016 SOI); EC SD Ex. 18 (December 2016 SOI); EC SD Ex. 19 (January 2020 SOI).

¹²⁷ 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).

¹²⁸ *Id.*; EC SD Ex. 16 (Vu Dep. Transcr.) at 77:10-28.

¹²⁹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 48:5-8; EC SD Ex. 16 (Vu Dep. Transcr.) 12:25-13:8.

¹³⁰ EC SD Ex. 16 (Vu Dep. Transcr.) 25:7-22.

¹³¹ See Answer ¶ 23; EC SD Ex. 11 (Ly-Vu Dep. Transcr) at 47:17-25.

¹³² 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.

¹³³ 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).

¹³⁴ See Alex Benedict Dep. Transcr. Excerpts (Feb. 12, 2020) (EC SD Ex. 24) at 16:4-17:22.

Law Offices of Alex L. Benedict (“Benedict Law”), to allow Benedict’s law firm to claim ezMed’s losses for tax purposes.¹³⁵ 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.¹³⁶

Finding of Fact No. 58: For the 2015 tax year, ezMed issued a Schedule K-1 indicating that Vu owned 100% of ezMed during that tax year.¹³⁷

Finding of Fact No. 59: 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.¹³⁸

Finding of Fact No. 60: For example, in January 2016, Vu identified two individuals (a married couple) as directors of ezMed.¹³⁹ Vu testified that he relied on those individuals for their experience with residential care facilities for the elderly.¹⁴⁰ 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%.¹⁴¹ 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 never occurred.¹⁴²

Finding of Fact No. 61: Alex Benedict incorporated and owns Benedict Law, a professional law corporation incorporated in California and located in the same office building as ezMed.¹⁴³ In November and December 2016, Benedict extended at least three loans totaling \$10,000 to ezMed, using checks from Benedict Law’s account.¹⁴⁴ Additionally, among other payments, Benedict caused Benedict Law to pay ezMed at least \$9,275 in 2016 and 2017, purportedly in exchange for marketing services.¹⁴⁵

Finding of Fact No. 62: 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.¹⁴⁶ 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.¹⁴⁷

¹³⁵ EC SD Ex. 16 (Vu Dep. Transcr.)19:19–20:6.

¹³⁶ *Id.* 25:7-22.

¹³⁷ See Schedule K-1 (2015), ezMed_0001 (EC SD Ex. 25).

¹³⁸ 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).

¹³⁹ See EC SD Ex. 17 (January 2016 SOI).

¹⁴⁰ EC SD Ex. 16 (Vu Dep.15Transcr.) at 60:14–63:20.

¹⁴¹ See Schedule K-1(2016), ezMed_0002 (EC SD Ex. 26).

¹⁴² EC SD Ex. 16 (Vu Dep. Transcr.) at 61:1-9.

¹⁴³ See EC SD Ex. 24 (Benedict Dep. Transcr.) at 13:25 – 14:21.

¹⁴⁴ 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.

¹⁴⁵ See EC SD Ex. 27 (Benedict Checks) at *007, 023, 027, 029.

¹⁴⁶ See Schedule K-1 (2017), ezMED_0004 (EC SD Ex. 28) and Schedule K-1 (2018), ezMed_0006 (EC SD Ex. 29).

¹⁴⁷ EC SD Ex. 16 (Vu Dep. Transcr.)20:1-22.

Finding of Fact No. 63: Similarly, between 2015 and 2017, Respondent extended at least 10 personal loans to ezMed totaling \$12,195.¹⁴⁸

Finding of Fact No. 64: For each of the 2017 and 2018 tax years, Vu caused ezMed to issue Schedule K-1s indicating that Respondent owned 54.05% of ezMed.¹⁴⁹ This allowed Respondent to claim a percentage of ezMed's losses in both years.

Finding of Fact No. 65: During the relevant period and from at least January 2015 through December 2016, ezMed was owned at least in part by Vu, Respondent's husband. Ly Vu had a personal interest in ezMed during the relevant period because of Vu's ownership interest (in addition to her direct ownership interest in the company).

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

Enforcement Counsel has averred that on January 13, 2016, "Vu filed the January 2016 SOI with the California Secretary of State. In the filing, Vu identified Respondent as ezMed's Chief Financial Officer at the time."¹⁵⁰ In support of this factual claim, Enforcement Counsel 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.¹⁵¹

Respondent has stated that she did not know she had been identified as ezMed's CFO.¹⁵²

Beyond offering a self-serving declaration to this effect,¹⁵³ Respondent cited to Respondent's SD Exhibits A, B, and C.¹⁵⁴ Respondent's 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.¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷

Respondent has not offered facts that contradict the limited factual claim expressed by Enforcement Counsel that she *was* identified in the first SOI in 2016 as ezMed's CFO. The two

¹⁴⁸ 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).

¹⁴⁹ EC SD Ex. 28 (Schedule K-1 (2017)) at *005 & EC SD Ex. 29 (Schedule K-1 (2018)) at *007.

¹⁵⁰ 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).

¹⁵¹ *Id.*

¹⁵² 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.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Resp. SD Ex. A at 2.

¹⁵⁶ Resp. SD Ex. B at 1.

¹⁵⁷ Resp. SD Ex. C at 1.

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 this evidence called into question, however, was whether Respondent 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 alleged 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 alleged 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.”¹⁵⁸

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 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.

Applying the above-referenced multiple factors after having considered the above evidence and Respondent’s testimony during the hearing leads me to the conclusion that Respondent knew in January 2016 that she had been identified as ezMed’s CFO.

During the hearing, when presented with a copy of the Bank’s Small Business Loan Application dated November 28, 2016 showing ezMed’s application for \$25,000 for the purchase of equipment,¹⁵⁹ Respondent confirmed that she obtained this document from her husband, Mr. Vu, and confirmed that Mr. Vu maintained the business records for that company.¹⁶⁰

When presented with a copy of a second Application, also showing ezMed as the applicant,¹⁶¹ Respondent confirmed that the second one – although dated November 28, 2016 – reflected two modifications: first, the loan amount was increased from \$25,000 to “\$25,000 -

¹⁵⁸ Notice of Intent at ¶ 44.

¹⁵⁹ Joint SD Ex. 18.

¹⁶⁰ Transcript (Tr.) at 23-24.

¹⁶¹ Joint SD Ex. 19.

\$50,000,” and second, in addition to identifying the purchase of equipment as a purpose of the request, the modified application identified “Working Capital/Accounts Receivable/Inventory” as another purpose.¹⁶² Respondent denied that she made the changes, asserting instead that “[i]t looks like [Mr. Vu] made the changes.”¹⁶³ When asked, however, whether it was her belief that Mr. Vu made these two changes and then provided the modified loan application to her, Respondent testified, “I’m not sure.”¹⁶⁴

During the hearing, Respondent testified, “I honestly don’t remember altering the loan application. We are not supposed to alter any documentation given by the borrower. So I don’t believe that I altered it.”¹⁶⁵ She offered further that “maybe it was [altered] once it was given to the processor and they talked about the loan and all of that, Michael and Michael, the two Michaels talking, he had Michael change it. I don’t know.”¹⁶⁶ She added, “I couldn’t say for sure. But I know that I wouldn’t have made the change because we are not allowed to make changes on loan applications.”¹⁶⁷

Although Respondent was identified as ezMed’s Chief Financial Officer during most of ezMed’s loan application process with the Bank,¹⁶⁸ this changed in December 11, 2016, when Mr. Vu filed the December 2016 SOI with the Secretary of State of the State of California.¹⁶⁹ In that amendment, Respondent’s daughter, rather than Respondent, is identified as ezMed’s Chief Financial Officer.¹⁷⁰

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. That exhibit is a copy of Respondent’s 2016 U.S. Income Tax Return, which she apparently filed with her husband, Mr. Vu.

Respondent, however, does not explain how the tax 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.¹⁷¹ It does not, however, speak to whether or not Respondent was the company’s CFO.

In her testimony, Respondent confirmed that when working with the Bank’s borrowers, she would sometimes obtain Statements of Information from borrowers during the lending process, and that these Statements would be filed with the California Secretary of State’s office and would thereafter be available on the Secretary of State’s public website.¹⁷² She also confirmed that the SOI dated January 13, 2016 identified her as ezMed’s Chief Financial Officer.¹⁷³ When asked whether she was ever ezMed’s Chief Financial Officer, however,

¹⁶² *Id.*; Tr. at 25-26.

¹⁶³ Tr. at 27.

¹⁶⁴ *Id.* at 29.

¹⁶⁵ *Id.* at 117.

¹⁶⁶ *Id.* at 117-18.

¹⁶⁷ *Id.* at 118.

¹⁶⁸ EC SD Ex. 17 (January 2016 SOI).

¹⁶⁹ EC SD Ex. 18.

¹⁷⁰ EC SD Ex. 18 (December 2016 SOI).

¹⁷¹ Resp. SD Ex. J at Schedules E and SE.

¹⁷² Tr. at 30-31.

¹⁷³ *Id.* at 31; Joint SD Ex. 5.

Respondent stated, “Not to my knowledge.”¹⁷⁴ After acknowledging that she lived with Mr. Vu in 2016, she denied ever seeing this document, and testified that Mr. Vu never mentioned to her that he had identified her as the company’s CFO.¹⁷⁵

Respondent denied that she ever performed any duties as ezMed’s CFO.¹⁷⁶ She acknowledged, however, that as ezMed’s Relationship Manager, it was possible that she assisted with the collection of these two documents, as well as the Bank’s form identifying Corporation Entity Documents – including the Statements of Information and the company’s Articles of Incorporation, which form reflects a legal review date of December 9, 2016.¹⁷⁷ She testified that when Articles of Incorporation were needed, it would be her common practice to collect the Articles from the borrower, and with respect to all three of the documents (the SOI, the two versions of the loan application, and the Articles of Incorporation), when asked whether she assisted with the collection of these documents, Respondent testified that “I can’t recall 100 percent, but it’s possible, yes.”¹⁷⁸

Similarly, Respondent acknowledged that it was within her duties – when needed – to refer to the Secretary of State’s website to determine whether an applicant is an active corporation, as well as taking the steps needed to obtain a list of the applicant’s officers or directors.¹⁷⁹ Here again, when asked whether she collected this type of information regarding ezMed, Respondent stated, “I’m not sure if I collected or the processor or underwriter collected them.”¹⁸⁰ She confirmed, however, that with the December 9, 2016 legal review, the Bank had not yet received ezMed’s Statement of Information and that if either the underwriter or processor needed her to collect that information from ezMed, then it would be her practice to do so.¹⁸¹

Notwithstanding this lack of certainty regarding whether Respondent supplied any or all of these documents to the Bank, Respondent confirmed her receipt of an email dated December 13, 2016, sent to her from Mr. Vu (and subsequently forwarded by Respondent to the Bank’s Credit Analyst Michael Yushak on the same day), indicating that the ezMed “Cloud-filed copy of SOI” dated December 11, 2016, by which Mr. Vu removed Respondent as ezMed’s CFO and identified their daughter, Britney Vu as the CFO, was attached.¹⁸²

Respondent confirmed that because the SOI that identified her as the company’s CFO was available throughout 2016, she could have provided the 2016 version to the Bank, “[i]f it was asked of me to get it from” Mr. Vu.¹⁸³

Throughout this exchange during the evidentiary hearing, it appeared Respondent was resistant to answering directly whether she was the person who in the ordinary course of business would be responsible for gathering this information and delivering the documents to the Bank.

The following exchange illustrates the concern:

¹⁷⁴ Tr. at 32.

¹⁷⁵ *Id.* at 32-33.

¹⁷⁶ *Id.* at 34.

¹⁷⁷ *Id.* at 37; EC Hearing Ex. 10.

¹⁷⁸ Tr. at 37.

¹⁷⁹ *Id.* at 38.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 39.

¹⁸² *Id.* at 41-42; Joint Ex. 20.

¹⁸³ Tr. at 43.

Q [by Enforcement Counsel]: At that time, you could have obtained the January 2016 statement from the Secretary of State's website, correct?

A [by Respondent]: If the processor or underwriter had asked me to look for that, then yes, I would either go on the State's website or ask Mr. Vu for it.

Q: In light of the fact that you were the person that ultimately sent the statement to Mr. Yushak, doesn't it appear that you were the person responsible for collecting that information from the borrower?

A: If Mr. Yushak asked me to get that from the borrower, then yes, I would have obtained that from the borrower.

Q: Doesn't it appear that that's what happened?

A: From the email, yes.

Q: So on December 9th, 2016, you could have obtained a copy of the January 2016 statement from either the Secretary of State's website or from ezMed and provided that document to the Bank, correct?

A: If Mr. Yushak had requested that from me, then, yes, I would have gotten that from the website or Mr. Vu.

Q: But haven't we just resolved that he had asked you to collect that information from the borrower?

A; From the emails that – yes, from the emails that we are looking at, yes, that's what it looks like – he had asked me and Mr. Vu sent it to me and, therefore, I forwarded it to Michael.¹⁸⁴

Elsewhere in her testimony, Respondent again appeared to seek to deflect any suggestion that she was familiar with ezMed's operations. The following exchange is noted:

Q [by Enforcement Counsel]: Ms. Ly-Vu, let's talk about your understanding of ezMed's finances over the years. To your knowledge, did ezMed ever generate much business?

A [by Respondent]: EzMed Cloud, I'm not aware of the day-to-day operation or how well it's doing, but at the time it was a brand new business.

Q: Right. And I'm just speaking generally, Over the years, to your knowledge, has ezMed ever generated much business?

A: I'm not sure.

Q: Was there ever a period during which ezMed generated a lot of business?

A: I don't know.

Q: Okay. Let's look at some of the documents.

[Joint Exhibit 17 is displayed. The exhibit is a Business Summary Memorandum dated February 25, 2015, from Mai Ly-Vu to BSA regarding ezMedCloud, Inc.] Respondent confirmed that she prepared the memo, which

¹⁸⁴ *Id.* at 43-45.

reported, in part: “2) Describe the overall nature of the business (e.g., years of operation, volume of business growth and financial strength, cash flow, monthly revenue, and how higher risk services – online banking, remote deposit, ACH would meet their banking needs). Provides online marketing services for assistance/elderly facilities. The business has been in existence since 2013. This account will have low volume activities.”]

Q: By low-volume activities, did you mean that ezMed’s day-to-day volume of business would be low?

A: I meant that, yes, it will have low activity because it’s a new business.

Q: And so ezMed wouldn’t be generating much revenue?

A: That’s not what I meant. It just means low activity, means not a lot of activity in the account.

Q: Meaning that there would be little deposits in the account?

A: Activities. It could be deposits, check writing, just the overall activity of the account.

Q: Was it your understanding then that the company would not be earning much money?

A: It’s low volume. I did not say the money, I wouldn’t know that. I don’t know what’s going to generate. All I know is it had low volume, not a lot of activity.

The Business Summary Memorandum established that Respondent was able to describe what kind of banking customer ezMed was and the overall nature of the business. The Memorandum also reported Respondent conducted an on-site visit (although Respondent in this Memorandum failed to answer specific questions asked of her: in particular she failed to report the date or dates of her visit(s), failed to identify the person she spoke with during the visit, and failed to answer the question whether the facility supports the volume of business).¹⁸⁵

Documentary evidence and Respondent’s testimony also established that three weeks after ezMed’s loan was submitted, Respondent was actively engaged in monitoring the services the Bank was providing to ezMed related to the loans. In an email from Respondent to the Bank’s Treasury Management Support Representative, Jonathan Gallardo, dated December 19, 2016, Respondent asked that the Bank activate the Bank’s Business eBanking function, which would allow the business to transfer loan proceeds and perform other actions online.¹⁸⁶

In the email exchange, Respondent asked Mr. Gallardo whether he knew if the “transfer and payment options are turned on,” adding “Michael is not able to transfer” from the line of credit after that line had been funded by the Bank a few days earlier.¹⁸⁷ In response, Mr. Gallardo wrote that he could add the function, but only if she provided her “approval to turn on loan

¹⁸⁵ Respondent in her prehearing deposition testified, however, that, contrary to her representations in the Business Summary memorandum, she did not perform an on-site visit. EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 63.

¹⁸⁶ Tr. at 73; Joint Ex. 22.

¹⁸⁷ Tr. at 74.

advances for the client.”¹⁸⁸ Respondent approved the request, and the following day Mr. Vu was able to draw on the line of credit.¹⁸⁹

Given the extent of Respondent’s involvement with ezMed, as demonstrated through her testimony and through documentary evidence, I find her answers to this line of questions during the hearing to be indicative of deflection and prevarication, eroding the reliability of the answers given and calling into question her credibility as a witness.

Further evidence suggesting the unreliability of Respondent’s testimony surfaced when Respondent was asked whether she knew of ezMed’s history of indebtedness. During the hearing, Respondent testified as follows:

Q [by Enforcement Counsel]: Now that we’ve covered ezMed’s losses leading up to the loan application, let’s talk about its debts at that time. In November of 2016 when ezMed applied for the line of credit, were you aware of any debts owed by the company?

A [by Respondent]: No.

Q: Of course, you knew that ezMed owed you at least \$11,400 at the time.

A: I know that ezMed owed me money, yes.

Q: And you knew that Mr. Vu had kept track of the loans that you had made to the company, correct?

A: Yes.¹⁹⁰

Finding of Fact No. 66: Applying traditional tools for determining the weight to give conflicting evidence, notably here including the inability of the witness to clearly recall her course of conduct in light of her customary conduct under similar conditions, her failure to provide responses that were consistent with contemporaneously issued email, her reluctance during the hearing to answer questions directly and instead attempting to deflect so that the question is only indirectly answered, and the witness’s potential motivation to obfuscate and avoid providing testimony that may indicate a conscious contemporaneous awareness that her husband had in the earlier filing of the SOI identified her as ezMed’s CFO, I find preponderant and persuasive evidence that Respondent had such awareness, that the awareness existed in January 2016, and that the awareness came from her own actions in assisting her husband make the application for the ezMed loan. I therefore reject as not credible Respondent’s averment that she was not aware in January 2016 that she had been identified in January 2016 as ezMed’s CFO.

¹⁸⁸ *Id.*; Joint Ex. 22.

¹⁸⁹ Tr. at 75.

¹⁹⁰ *Id.* at 65.

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

Finding of Fact No. 67: At all relevant times, Respondent regularly paid for her and Vu's joint household expenses, such as their mortgage, utilities, insurance, internet and phone bill, car payments, and groceries.¹⁹¹

Finding of Fact No. 68: In 2016 and 2017, Vu made payments, typically monthly, of \$1500 to \$3000 from ezMed to Respondent to cover household expenses, provided that there were sufficient funds in ezMed's account to do so.¹⁹²

Enforcement Counsel aver that in late 2016 and early 2017, including during the period when ezMed was applying for the QuickScore loan, Respondent expected to continue receiving such payments for household expenses from ezMed or Vu.¹⁹³ 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.¹⁹⁴

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."¹⁹⁵

Such a declaration without support by other references in the record must be weighed within the context of the record as a whole. 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 create a question of material fact.

Finding of Fact No. 69: Throughout the time material to the charges in the Notice of Intent, Respondent expected to continue receiving such payments for household expenses from ezMed or Vu.¹⁹⁶

¹⁹¹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 89:19-23; 91:5-19.

¹⁹² 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.").

¹⁹³ 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).

¹⁹⁴ *Id.*

¹⁹⁵ 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.

¹⁹⁶ 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).

EzMed was indebted to Respondent because of loans Respondent had made to the company

Finding of Fact No. 70: Between January 21, 2015, and November 20, 2017, Respondent made loans to ezMed totaling \$12,195.¹⁹⁷ When ezMed obtained the loan from PPB in December 2016, ezMed owed Respondent at least \$11,420.¹⁹⁸

Enforcement Counsel averred that in 2016 and 2017, including during the period when ezMed was applying for the QuickScore loan, Respondent 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."¹⁹⁹

In her Response to the claims in this Paragraph, Respondent averred 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."²⁰⁰ Through this response, 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.²⁰¹

In her testimony during the hearing, Respondent confirmed that she had helped her husband's business:

Q [by Enforcement Counsel]: Did you ever help your husband out with the business?

A [by Respondent]: If he asked for help, yes.

Q: And what kind of help did you provide to the business?

A: Mostly if he needed assistance with money.

¹⁹⁷ EC SD Ex. 31 (Ly-Vu Loans to ezMed); see also Answer ¶ 30; EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 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).

¹⁹⁸ See EC SD Ex. 31 (Ly-Vu Loans to ezMed).

¹⁹⁹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 87:17-19, 92:15-24.

²⁰⁰ See Decl. of Ly-Vu ¶ 8.

²⁰¹ Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at 33, ¶ 70.

Q: Okay. So if the business was in need of funds, you would either give him money or lend money to the business?

A: Correct.²⁰²

Upon the record as a whole, including Respondent's testimony during the hearing, there is preponderant and substantial evidence that Respondent supported ezMed financially and expected to have loans she made to the business repaid, although she did not know when such repayment would be made.

Finding of Fact No. 71: In 2016 and 2017, including during the period when ezMed was applying for the QuickScore loan, Respondent expected ezMed to repay her for the loans she had made to the company.

Respondent acquired a sufficient ownership interest in ezMed to support her claim for federal and state tax benefits

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.²⁰³ Enforcement Counsel aver 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."²⁰⁴

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,²⁰⁵ "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.²⁰⁶

During the hearing, Respondent confirmed that between 2015 and 2016, she and Mr. Vu reported nearly \$55,000 in losses related to ezMed.²⁰⁷

²⁰² Tr. at 50. Respondent further testified that she extended \$11,420 in loans to ezMed in 2015 and 2016, and \$775 in 2017. Tr. at 65; Joint Ex. 16.

²⁰³ Respondent did not dispute the factual claims 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 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).

²⁰⁴ Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at 18, ¶71.

²⁰⁵ Respondent's Response to the Statement of Undisputed Facts in Support of Enforcement Counsel's Motion for Summary Disposition at 34, ¶ 71.

²⁰⁶ 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,"

²⁰⁷ Tr. at 64.

Respondent through her 2017 tax returns established that she held herself out as having a sufficient interest in ezMed to qualify to “use the loss” that her husband could not use.²⁰⁸ 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.”²⁰⁹

Finding of Fact No. 72: For the 2017 tax year, ezMed issued Respondent a Schedule K-1 indicating that Respondent was a 54.05% owner of ezMed (Benedict Law owned the remaining 45.95%).²¹⁰

Finding of Fact No. 73: The Schedule K-1 ezMed issued to Respondent for the 2017 tax year further indicated that Respondent’s share of ezMed’s ordinary business income for the year was a loss of \$16,460.²¹¹

Finding of Fact No. 74: In 2018, Respondent, 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”).²¹²

Finding of Fact No. 75: The Federal Return for 2017 required Respondent to indicate her filing status.²¹³ Respondent, or the individual who prepared the form on her behalf, checked the box next to “Married filing separately” and identified Respondent’s husband as Michael Vu (Item 3).²¹⁴

Finding of Fact No. 76: The Federal Return for 2017 also required Respondent to identify all income received during the calendar year.²¹⁵ In response, Respondent, or the individual who prepared the 2017 Form 1040 on Respondent’s behalf, listed her various sources of income.²¹⁶ Ly Vu, or the individual who prepared the 2017 Form 1040 on Respondent’s behalf, further *identified a nonpassive loss in the amount of \$16,460 based on the K-1 ezMed issued to Respondent for that year* (Item 17).²¹⁷ This deduction reduced Respondent’s federal taxable income for 2017 by \$16,460.²¹⁸

Finding of Fact No. 77: In 2018, Respondent authorized her tax preparer to e-file her 2017 Federal Return on her behalf by signing an IRS e-file Signature Authorization Form

²⁰⁸ 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.”.

²⁰⁹ Statement of Undisputed Facts in Support of Enforcement Counsel’s Motion for Summary Disposition at 18, ¶ 71.

²¹⁰ See EC SD Ex. 28 (Schedule K-1 (2017)) at *005.

²¹¹ *Id.*

²¹² See Respondent’s 2017 Federal and State Tax Filings (“Ly-Vu Tax Filings (2017)”), NGUYEN_0001 (EC SD Ex. 32) at *012-015.

²¹³ *Id.* at *012.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*; see also *id.* at *015 (Schedule E, reporting Respondent’s nonpassive loss of \$16,460 from her ownership interest in ezMed).

²¹⁸ Respondent’s 2017 Federal and State Tax Filings (“Ly-Vu Tax Filings (2017)”), NGUYEN_0001 (EC SD Ex. 32) at *015.

8879.²¹⁹ On that authorization form, Respondent confirmed her federal adjusted gross income identified on the Federal Return, which included the \$16,460 deduction for ezMed’s losses.²²⁰ Respondent 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.²²¹ Thereafter, Respondent’s tax preparer filed Respondent’s Federal Return for 2017 with the IRS.²²²

Finding of Fact No. 78: In 2018, Respondent, 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”).²²³

Finding of Fact No. 79: The State Return for 2017 required Respondent to indicate her filing status.²²⁴ Respondent or the individual who prepared the form on her behalf checked the box next to “Married/RDP filing separately” and identified Respondent’s husband as Michael Vu (Item 3).²²⁵

Finding of Fact No. 80: The State Return for 2017 also required Respondent to identify her federal adjusted gross income from her Federal Return (Item 13).²²⁶ In response, Respondent, or the individual who prepared the 2017 Form 540 on Respondent’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-1.²²⁷ As with her federal taxes, this deduction reduced Respondent’s state taxable income by \$16,460 for 2017.²²⁸

Finding of Fact No. 81: In 2018, Respondent authorized her tax preparer to e-file her State Return on her behalf by signing a California e-file Signature Authorization for Individuals Form 8879.²²⁹ On that authorization form, Respondent confirmed her California adjusted gross income identified on the corresponding State Return, which included the deductions for ezMed’s losses.²³⁰ Respondent 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.²³¹ Thereafter, Respondent’s tax preparer filed Respondent’s State Return for 2017 with the FTB, together with the authorization form.²³²

Finding of Fact No. 82: Through these filings, Respondent claimed that she had acquired a sufficient stake in ezMed during the 2017 calendar year to support her claim that

²¹⁹ *Id.* at *001.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.* at *017-023.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* at *018.

²²⁷ *Id.*; see also *id.* at *022 (schedule identifying Respondent’s \$16,460 deduction).

²²⁸ Respondent’s 2017 Federal and State Tax Filings (“Ly-Vu Tax Filings (2017)”), NGUYEN_0001 (EC SD Ex. 32) at *022.

²²⁹ *Id.* at *002.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

losses attributed to ezMed could lawfully be recognized to reduce her federal and state taxable income for the 2017 tax year.

Respondent Helped ezMed Obtain a Loan

Finding of Fact No. 83: From 2015 to 2017, Respondent served as the Bank's Relationship Manager for ezMed.²³³

Finding of Fact No. 84: In February 2015, two months after PPB hired her, Respondent 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.²³⁴

Finding of Fact No. 85: Respondent did not disclose in the Business Summary memorandum that her husband owned ezMed, or that she held any other personal interest in the company.²³⁵

Respondent 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.²³⁶ Moreover, Respondent 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.²³⁷ Further, contrary to her representations in the Business Summary memorandum, Respondent did not perform an on-site visit when ezMed's account was opened.²³⁸

Enforcement Counsel aver that in November 2016, Respondent 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.

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

Q [by Enforcement Counsel]: Can you walk me through the loan application process that ezMed went through with Pacific Premier?

A [by Michael Vu]: 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?

²³³ 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.

²³⁴ See Business Summary, FRB-MLV-0005017 (EC SD Ex. 33).

²³⁵ *Id.*

²³⁶ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 61:24 – 62:10.

²³⁷ *Id.* at 62:18 – 63:13.

²³⁸ *Id.* at 63:14-24.

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.²³⁹

* * *

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.²⁴⁰

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

Q [by Enforcement Counsel]: How did Mr. Vu learn about the Quickscore loan program?

A [by Respondent]: 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.²⁴¹

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 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."²⁴²

The distinction Respondent raises here 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 proved 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

²³⁹ EC SD Ex. 16 (Vu Dep. Transcr.) at 43:16 – 44:5.

²⁴⁰ EC SD Ex. 16 (Vu Dep. Transcr.) at 43:16-23.

²⁴¹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 65:21 – 66:1.

²⁴² 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.

a material one, and given that the averment lacks support in the record, preponderant evidence establishes that Respondent served as ezMed's Relationship Banker and facilitated its loan application.

Finding of Fact No. 86: In November 2016, Respondent provided information to Vu that led ezMed to take out a small business line of credit with the Bank.

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 the Bank's Credit Manager, Richard 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").²⁴³

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.²⁴⁴

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.²⁴⁵

That deposition included the following exchange:

Q [by Enforcement Counsel]: Is it your understanding that ezMed obtained a loan from Pacific Premier in 2016?

A [by Respondent]: Yes.

Q What type of loan did it receive?

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?

²⁴³ EC SD Ex. 4 (Bushman Declaration) at ¶ 38, citing ezMed Business Summary, FRB-MLV-0005017 (EC SD Ex. 33).

²⁴⁴ EC SD Ex. 4 (Bushman Declaration) at ¶ 39, citing ezMed Modified Loan Application, FRB-MLV-0195998 (EC SD Ex. 35)

²⁴⁵ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 65:8-15.

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.”²⁴⁶

The distinction Respondent raised 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.²⁴⁷

Finding of Fact No. 87: During the relevant period, Respondent served as the Bank’s business banker for Companies 1, 2, 3 and 4, without disclosing her familial relationship with the borrowers.

Finding of Fact No. 88: To apply for the QuickScore loan, Vu completed a small business loan application on behalf of ezMed.²⁴⁸

Finding of Fact No. 89: The loan application required Vu to indicate the purpose of the credit request. In response, Vu checked the box next to “Equipment/Purchase.”²⁴⁹

Finding of Fact No. 90: The loan application also required Vu to indicate the dollar amount requested. In response, Vu wrote “25,000.”²⁵⁰

Finding of Fact No. 91: 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.”²⁵¹

²⁴⁶ 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.

²⁴⁷ 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.

²⁴⁸ See Loan Application, Respondent-0000444 (EC SD Ex. 34).

²⁴⁹ *Id.* at *444.

²⁵⁰ See EC SD Ex. 34 at 1.

²⁵¹ *Id.*

Finding of Fact No. 92: 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.

Finding of Fact No. 93: 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.”²⁵² Vu then provided the signed loan application to Respondent, who submitted it to the Bank in her role as ezMed’s Relationship Manager.²⁵³

Controverted Fact #2: Respondent altered ezMed’s Loan Application

Enforcement Counsel aver that thereafter, Respondent (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 the original application.²⁵⁴ 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”.²⁵⁵ 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.²⁵⁶

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.

²⁵² 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).

²⁵³ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 65:12-15.

²⁵⁴ Modified Loan Application, FRBMLV-0195998 (EC SD Ex. 35) at *998

²⁵⁵ EC SD Ex. 16 (Vu Dep. Transcr.) at 51:18-25

²⁵⁶ 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.

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.²⁵⁷

Upon considering the record as a whole while applying traditional tools for determining the weight to give conflicting evidence, notably here including the inability of the witness to clearly recall her course of conduct in light of her customary conduct under similar conditions, her failure to provide consistent responses to relevant questions, her reluctance during the hearing to answer questions directly and instead attempt to deflect so that the question is only indirectly answered, and the witness's potential motivation to obfuscate and avoid providing testimony that may establish her role in facilitating ezMed's loan application, I find Respondent's averment that she did not make these changes to be not credible.

Finding of Fact No. 94: Preponderant and reliable evidence established that Respondent (and not Vu) was the person who forwarded the application to PPB after Vu signed it, and she 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 request²⁵⁸ and also changed the dollar amount requested from "25,000" to "25,000 – 50,000" by adding "– 50,000" in a darker ink.²⁵⁹

Finding of Fact No. 95: Respondent did not correct Vu's response that falsely indicated he had not been convicted of any felonies.²⁶⁰

Finding of Fact No. 96: On November 28 or 29, 2016, Respondent submitted the Modified Loan Application to Michael Yushak, a Credit Analyst who specialized in QuickScore loans.²⁶¹

²⁵⁷ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 68-69.

²⁵⁸ Modified Loan Application (EC SD Ex. 35) and

²⁵⁹ Modified Loan Application, FRBMLV-0195998 (EC SD Ex. 35) at *998

²⁶⁰ See EC SD Ex. 35 (Modified Loan Application) at *999.

²⁶¹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 69:13 – 70:2; EC SD Ex. 4 (Bushman Decl.) ¶ 39.

Finding of Fact No. 97: From that point onward, as ezMed’s Relationship Manager, Respondent 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.²⁶²

Finding of Fact No. 98: When Respondent submitted the Modified Loan Application to Credit Analyst Yushak, Respondent 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.²⁶³

Finding of Fact No. 99: When Respondent submitted the Modified Loan Application, ezMed’s filings with the California Secretary of State (the January 2016 SOI) still identified Respondent as ezMed’s Chief Financial Officer.²⁶⁴ Respondent also did not disclose that fact to Bank Management or underwriting staff (including Credit Analyst Yushak) at that time.²⁶⁵

Finding of Fact No. 100: 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.²⁶⁶

Finding of Fact No. 101: 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.²⁶⁷ 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.²⁶⁸

Finding of Fact No. 102: On November 30, 2016, Credit Manager Bushman approved the ezMed loan application.²⁶⁹

Finding of Fact No. 103: 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.²⁷⁰

Finding of Fact No. 104: On December 9, 2016, the Bank requested additional information from ezMed regarding the identity of its owners, officers, and directors.²⁷¹

Finding of Fact No. 105: 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.²⁷²

Finding of Fact No. 106: To verify Vu’s disclosure, the Bank asked ezMed to provide a Statement of Information filed with the California Secretary of State.²⁷³

²⁶² EC SD Ex. 4 (Bushman Decl.) ¶ 40.24

²⁶³ Id. ¶¶ 49, 53; Loan Transfer Approval Form, FRB-MLV-0148297 (EC SD Ex. 36).

²⁶⁴ EC SD Ex. 17 (January 2016 SOI).

²⁶⁵ EC SD Ex. 4 Bushman Decl. ¶¶ 49, 53.

²⁶⁶ See Loan Approval Memo, FRB-MLV-0196040 (EC SD Ex. 37); EC SD Ex. 4 (Bushman Decl.) ¶ 1.

²⁶⁷ See EC SD Ex. 14 (Credit Policy (2016)) at *743; EC SD Ex. 4 (Bushman Decl.) ¶ 15.

²⁶⁸ See EC SD Ex. 14 (Credit Policy (2016)) at *743; EC SD Ex. 4 (Bushman Decl.) ¶ 15.

²⁶⁹ EC SD Ex. 4 (Bushman Decl.) ¶ 45; EC SD Ex. 37 (Loan Approval Memo) at *041.

²⁷⁰ EC SD Ex. 4 (Bushman Decl.) ¶ 46.

²⁷¹ See Corporate Entity Checklist, FRB-MLV-0195846 (EC SD Ex. 38); EC SD Ex. 4 (Bushman Decl.) ¶¶ 47-48.

²⁷² See EC SD Ex. 23 (Dec.11 Corporate Officers List); EC SD Ex. 4 (Bushman Decl.) ¶ 47.

²⁷³ EC SD Ex. 4 (Bushman Decl.) ¶ 48; see Dec.13, 2016 email chain, FRB-MLV-0003061 (EC SD Ex. 39) at *061.

Finding of Fact No. 107: Instead of providing the Bank with the January 2016 SOI (which identified Respondent 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).²⁷⁴ The December 2016 SOI removed Respondent as its Chief Financial Officer and replaced her with Respondent’s daughter.²⁷⁵ On December 13, 2016, Vu forwarded the December 2016 SOI to Respondent who, in turn, sent it to Credit Analyst Yushak in response to the Bank’s request.²⁷⁶

Finding of Fact No. 108: 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.²⁷⁷

Finding of Fact No. 109: On December 20, 2016, Respondent sent an email to Jonathan Gallardo, a Treasury Management Support Representative, asking whether “the transfer and payment options a returned on” and stating “Michael [Vu] is not able to transfer from the line.”²⁷⁸ Gallardo responded: “Please provide your approval to turn on Loan Advances for the client.”²⁷⁹ Respondent responded: “Approved.”²⁸⁰

EzMed Made Payments to Respondent with Funds from the Line of Credit

Finding of Fact No. 110: Between December 20, 2016, and November 6, 2017, ezMed made at least nine payments totaling \$18,700 to Respondent from ezMed’s deposit account at PPB.²⁸¹ 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.”²⁸²

Payment 1: \$3,000 payment to Respondent for household expenses

Finding of Fact No. 111: As of the effective date of the ezMed Loan Agreement, more than 90 days had passed since Respondent had last received any payment from ezMed—a \$1500 check for “contract work”—in early September 2016.²⁸³ During that interim period, the average balance on ezMed’s deposit account at PPB had not risen above \$2,200.²⁸⁴

Finding of Fact No. 112: On December 20, 2016, the day on which Respondent 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 Respondent.²⁸⁵ The memo line of the check describes the payment as for “Contract work: Nov & Dec 2016.”²⁸⁶ At the time, there were insufficient funds in ezMed’s deposit account (\$1,294) to

²⁷⁴ *Id.* at *063.

²⁷⁵ *Id.*

²⁷⁶ See *id.* at *061.

²⁷⁷ See Loan Agreement, FRB-MLV-0195826 (EC SD Ex. 40).

²⁷⁸ Dec. 20, 2016 Gallardo Email, FRB-MLV-0196240 (EC SD Ex. 41).

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ 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).

²⁸² EC SD Ex. 42 at *2960, *3007-08, *3017, *3001, *3035, *3030, *3026.

²⁸³ EC SD Ex. 43 (Account Statements) at *992 (Check no. 3054).

²⁸⁴ *Id.* at *988, 984, 955.

²⁸⁵ EC SD Ex. 42 (ezMed Checks), at*2960 (check no. 3085).

²⁸⁶ *Id.*

clear the check.²⁸⁷ On December 21, 2016, ezMed transferred \$20,000 from the line of credit to its deposit account.²⁸⁸ On the same day, Respondent deposited the \$3,000 check to her checking account.²⁸⁹

Finding of Fact No. 113: Respondent did not perform contract work for ezMed in November or December of 2016 despite the check description; rather, Respondent testified that ezMed made this payment to her to cover her and Vu’s joint household expenses.²⁹⁰

Payment 2: \$5,000 payment to Respondent in repayment of loan

Finding of Fact No. 114: On December 28, 2016, ezMed issued a check for \$5,000 from its deposit account to Respondent.²⁹¹ The memo line of the check describes the payment as for “Repayment of Loan.”²⁹² At the time, the balance of ezMed’s deposit account was \$1,205, and there were insufficient funds to clear the check.²⁹³

Finding of Fact No. 115: On December 29, 2016, ezMed transferred \$9,500 from the line of credit to its deposit account.²⁹⁴ On the following day, Respondent deposited the check in her checking account.²⁹⁵

Finding of Fact No. 116: ezMed issued Respondent this check in repayment of loans she had made to Vu “[t]hroughout [their] marriage.”²⁹⁶

Finding of Fact No. 117: Respondent 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.”²⁹⁷

Payment 3: \$1,500 payment to Respondent for household expenses

Finding of Fact No. 118: On February 9, 2017, ezMed issued a check for \$1,500 from its deposit account to Respondent.²⁹⁸

Finding of Fact No. 119: The memo line of the check to Respondent describes this payment as for “Contract Work.”²⁹⁹ On February 14, 2017, Respondent deposited the check in her checking account.³⁰⁰

²⁸⁷ EC SD Ex. 43 (Account Statements) at *2957.

²⁸⁸ *Id.* at *2956.

²⁸⁹ EC SD Ex. 42 (ezMed Checks) at *2960; Check Deposit Summary, FRB-MLV-0195577 (EC SD Ex. 44).

²⁹⁰ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 88:7-17.

²⁹¹ EC SD Ex. 42 (ezMed Checks) at *2960 (check no. 3090).

²⁹² *Id.*

²⁹³ EC SD Ex. 43 (Account Statements) at *2957.

²⁹⁴ *Id.* at *2956.

²⁹⁵ EC SD Ex. 42 (ezMed Checks) at *2960; EC SD Ex. 44 (Check Deposit Summary).

²⁹⁶ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) 92:6-14.28.

²⁹⁷ *Id.* at 92:15-24.

²⁹⁸ EC SD Ex. 42 (ezMed Checks) at *3007 (check no. 3099).

²⁹⁹ *Id.*

³⁰⁰ *Id.*; EC SD Ex. 44 (Check Deposit Summary).

Finding of Fact No. 120: Two days earlier, on February 7, 2017, ezMed transferred \$14,000 from the line of credit to its deposit account.³⁰¹ Before doing so, the balance of ezMed's deposit account was \$411, and there were insufficient funds to clear the check to Respondent.³⁰²

Finding of Fact No. 121: Respondent did not perform contract work for ezMed despite the check description. Instead, ezMed made this payment to her to cover Respondent and Vu's joint household expenses.³⁰³

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

Finding of Fact No. 122: On February 17, 2017, ezMed issued a check for \$2,000 to Respondent and checks to other entities totaling \$3,549.³⁰⁴ The memo line of the check to Respondent describes the payment as for "Contract Work."³⁰⁵

Finding of Fact No. 123: On the same day, ezMed transferred \$6,000 from the line of credit to its deposit account.³⁰⁶ At the time, ezMed's deposit account balance was \$2,350, and absent the transfer would have had insufficient funds to clear all of the checks issued that day.³⁰⁷ On February 21, 2017, Respondent deposited the check in her checking account.³⁰⁸

Finding of Fact No. 124: Respondent did not perform contract work for ezMed in connection with this specific payment; rather, ezMed made this payment to her to cover her and Vu's joint household expenses.³⁰⁹

Finding of Fact No. 125: At that point, because the ezMed line of credit had been fully advanced, ezMed stopped making payments to Respondent for a period of three months.³¹⁰

Finding of Fact No. 126: 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, Respondent logged into the Bank's account management system and placed a waiver on the minimum balance requirements applicable to ezMed's deposit account.³¹¹ This permitted ezMed's account to hover below \$750 on average during the months of March and April without incurring a penalty.³¹² Although Respondent would have had authority to waive minimum balance requirements applicable to third parties, she would not have been permitted to waive

³⁰¹ EC SD Ex. 43 (Account Statements) at *3005.

³⁰² EC SD Ex. 42 (ezMed Checks) at *3007.

³⁰³ 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); 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.

³⁰³ EC SD Ex. 42 (ezMed Checks) at *3008 (check no. 3102).

³⁰⁴ EC SD Ex. 42 (ezMed Checks) at *3008 (check no. 3102).

³⁰⁵ *Id.*

³⁰⁶ EC SD Ex. 43 (Account Statements) at *3005.

³⁰⁷ *Id.* at *3006.

³⁰⁸ EC SD Ex. 42 (ezMed Checks) at *3008; EC SD Ex. 44 (Check Deposit Summary).

³⁰⁹ 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.").

³¹⁰ See EC SD Ex. 43 (ezMed Account Statements).

³¹¹ See ezMed Account Information, FRB-MLV-0195822(EC SD Ex. 45).

³¹² See EC SD Ex. 43 (ezMed Account Statements) at *3019, 2995.

such requirements with respect to the account of an immediate family member or a business owned by an immediate family member.³¹³

Finding of Fact No. 127: On June 7, 2017, Respondent's daughter made a \$5,000 payment towards the principal balance of the ezMed loan.³¹⁴ Throughout the entire term of the loan, ezMed made only two payments totaling \$215 towards principal.³¹⁵ Around this time, and through November 2017, ezMed resumed making payments to Respondent. Vu was ezMed's only fulltime employee, with the one exception, that ezMed hired his and Respondent's daughter as an intern "to show her how to do the books."³¹⁶ Respondent'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."³¹⁷

Payment 5: \$1,200 payment to Respondent for household expenses

Finding of Fact No. 128: On or around June 1, 2017, ezMed issued a check for \$1,200 from the deposit account to Respondent.³¹⁸ The memo line of the check describes the payment as for "Contract Work."³¹⁹ On or around June 5, 2017, Respondent deposited the check in her checking account.³²⁰ In June 2017, ezMed subsequently took three advances totaling \$4,500 from the line of credit to its deposit account.³²¹ 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 Respondent and more than \$1,700 in payments to Respondent's daughter and Vu.³²²

Finding of Fact No. 129: Respondent did not perform contract work for ezMed in connection with this specific payment; ezMed made this payment to her to cover her and Vu's joint household expenses.³²³

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

Finding of Fact No. 130: 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 Respondent, totaling \$6,000 in payments to her.³²⁴ The memo line of each check describes the payment as for "Contract work."³²⁵ Respondent deposited each check in her checking account within a few days of receipt.³²⁶ EzMed relied on proceeds from the line of credit to make each of the foregoing payments to Respondent.³²⁷

³¹³ Decl. of Terri Benkey (EC SD Ex. 56) ¶ 11.30

³¹⁴ See Daughter Payment, FRB-MLV-0196086 (EC SD Ex. 46).

³¹⁵ See ezMed Loan History, FRB-MLV-0195509 (EC SD Ex. 47).

³¹⁶ EC SD Ex. 16 (Vu Dep. Transcr.) 28:24 – 29:13.

³¹⁷ *Id.* 29:9 – 30:5; see also, e.g., Daughter Account Statements, JPMC_00290 (EC SD Ex. 48) at *293.

³¹⁸ EC SD Ex. 42 (ezMed Checks) at *3017 (check no. 3120).

³¹⁹ *Id.*

³²⁰ See *Id.*; EC SD Ex. 44 (Check Deposit Summary).

³²¹ EC SD Ex. 43 (Account Statements) at *3015-3016 (transfers from loan on June 8, 19, and 29).

³²² See *Id.* at *3015, 3017; EC SD Ex. 48 (Daughter account statements) at *372-375.

³²³ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 97:11-23 (noting that the check was for "household expenses").

³²⁴ EC SD Ex. 42 (ezMed Checks) at *3001 (check no. 3132), *3035 (check no. 3136), *3030 (check no. 3146), and *3026 (check no. 3152).

³²⁵ *Id.*

³²⁶ See *Id.*; EC SD Ex. 44 (Check Deposit Summary).

³²⁷ See EC SD Ex. 16 (Vu Dep. Transcr.) 134:12– 136:4.

Finding of Fact No. 131: Respondent did not perform contract work for ezMed in connection with any of these four payments; rather, ezMed made these payments to her to cover her and Vu’s joint household expenses.³²⁸ The payments Respondent received from ezMed for household expenses were unrelated to the company’s business.³²⁹

Finding of Fact No. 132: From December 2016 to December 2017, ezMed relied on the line of credit to make over 20 payments totaling \$15,463 to Respondent’s daughter.³³⁰ During that period, Respondent’s daughter deposited a portion of many (roughly half) of the checks into a checking account she held jointly with Respondent.³³¹

Finding of Fact No. 133: ezMed relied on proceeds from the line of credit to fund at least nine payments totaling approximately \$18,700 to Respondent 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 Respondent.³³²

Respondent Concealed Material Information from the Bank

Finding of Fact No. 134: Acting as the Relationship Manager for ezMed, Respondent served as the Bank’s primary point of contact with ezMed. In this role, Respondent 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.³³³

Conclusion of Law No. 4: Pursuant to the Bank’s policies, while acting as the Bank’s Relationship Manager for ezMed, Respondent “influenced the Bank’s collection of credit-related information,”³³⁴ had “an obligation to report her personal interest in the line of credit to [Mr. Bushman] or other Bank management,”³³⁵ had an obligation “to disclose the true purpose of the credit request,”³³⁶ and had an obligation to disclose Mr. Vu’s felony conviction.³³⁷

Finding of Fact No. 135: Information furnished to the Bank 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.³³⁸

³²⁸ 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 Respondent did not perform any work for ezMed).

³²⁹ EC SD Ex. 11 (Ly-Vu Dep. Transcr.) at 90:5-7.

³³⁰ See EC SD Ex. 43 (Account Statements); EC SD Ex. 42 (ezMed Checks).

³³¹ See EC SD Ex. 48 (Daughter Account Statements).

³³² 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”).

³³³ EC SD Ex. 4 (Bushman Decl.) ¶¶ 51, 56-81

³³⁴ *Id.* at ¶ 58.

³³⁵ *Id.* at ¶ 79.

³³⁶ *Id.* at ¶ 80.

³³⁷ *Id.* at ¶ 81.

³³⁸ EC SD Ex. 4 at ¶ 52.

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

The record reflects that until Bank staff uncovered Respondent’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, Respondent’s superior, and Credit Manager Bushman, who approved the ezMed loan) and underwriting staff (Credit Analyst Yushak) were not aware that Respondent was married to Vu, ezMed’s principal, or that she had been designated as ezMed’s Chief Financial Officer.³³⁹

Relying solely on her own Declaration, Respondent responded to these averments by stating, “it was common knowledge throughout PPB that Vu and I were married.”³⁴⁰ 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 Respondent were married.”³⁴¹

In this context, Respondent’s burden – showing that her marital state was common knowledge at the Bank – was relatively light. She could have met that burden by offering sworn testimony or declarations from any of the persons she identified in her Response with knowledge of her marital status. Instead, during the hearing, Respondent testified – without providing supporting evidence – that “Michael Yushak, who was the analyst, he got me involved in some things, and sometimes he contacted Michael with. So there were things that he and Michael talked about, and he knew that Michael is my husband, because I had introduced them over the phone. So that he already knew.”³⁴²

Bereft of substantial competent evidence to support this claim, 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 and her testimony cannot constitute evidence sufficient to establish that she had properly disclosed her relationship with Mr. Vu during the ezMed loan application process.

Finding of Fact No. 136: Respondent did not disclose her relationship with Mr. Vu or with ezMed at the time she presented ezMed’s loan application to the Bank, nor throughout the time the loan application was pending.

Finding of Fact No. 137: Pursuant to the Code of Conduct and prudent banking practices, Respondent 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.³⁴³

³³⁹ EC SD Ex. 9, Declaration of Barbara Ingram at ¶ 7; ¶ 40; EC SD Ex. 36.

³⁴⁰ 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.

³⁴¹ 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.

³⁴² Tr. at 117.

³⁴³ See EC SD Ex. 4 (Bushman Decl.) ¶ 57 & EC SD Ex. 9 (Ingram Decl.) ¶ 41.

Finding of Fact No. 138: Credit Manager Bushman would have expected Respondent to disclose such a conflict of interest to him or members of his staff upon her submission of ezMed’s loan application.³⁴⁴

Finding of Fact No. 139: 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.³⁴⁵

Finding of Fact No. 140: While acting 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 and her failure to disclose her personal interest in the outcome of the ezMed loan – actions that called into question the integrity of the entire ezMed loan application and underwriting processes.³⁴⁶

Finding of Fact No. 141: If the Bank’s senior loan officers 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 conducted additional due diligence to ensure that the business was legitimate, to better understand Respondent’s relationship with and role in the business, if any, and, most importantly, to determine how loan proceeds would be utilized; and 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.³⁴⁷

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

Finding of Fact No. 142: Respondent did not until December 2017 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.³⁴⁸

Finding of Fact No. 143: 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.³⁴⁹ 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.”³⁵⁰ Vu signed this certification as ezMed’s Chief Executive Officer on November 28, 2016.³⁵¹ The Loan Agreement similarly required borrowers to certify that proceeds “will be used

³⁴⁴ See EC SD Ex. 4 (Bushman Decl.) ¶ 57.

³⁴⁵ See *id.* at ¶ 58.

³⁴⁶ See EC SD Ex. 4 (Bushman Decl.) ¶¶ 58-60.

³⁴⁷ EC SD Ex. 5 at ¶ 59; EC SD Ex. 9 at ¶ 41.

³⁴⁸ EC SD Ex. 4 (Bushman Declaration) at ¶ 61; EC SD Ex. 9 (Ingram Decl.) ¶ 43

³⁴⁹ EC SD Ex. 4 (Bushman Decl.) ¶ 62.

³⁵⁰ EC SD Ex. 35 (Modified Loan Application) at *998.

³⁵¹ *Id.*

solely for business purposes . . . and not for any personal, family, or household use.”³⁵² Vu signed, and initialed each page of, the Loan Agreement as guarantor of the line of credit on December 14, 2016.³⁵³

Finding of Fact No. 144: Pursuant to the Bank’s Code of Conduct and prudent banking practices, Respondent 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.³⁵⁴

Finding of Fact No. 145: Credit Manager Bushman furthermore would have expected Respondent to disclose her financial arrangements with ezMed to him or members of his staff at the time of the loan application.³⁵⁵

Finding of Fact No. 146: 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.³⁵⁶

Finding of Fact No. 147: Had Credit Manager Bushman known of the foregoing personal financial arrangement between Respondent, Vu, and ezMed, or that loan proceeds would be used to pay for non-business expenses, he would have declined the loan.³⁵⁷ As administered by Mr. Bushman, QuickScore loans were not consumer products, and it was essential that loan proceeds not be used for non-business expenditures. Accordingly, ezMed would not have qualified for the QuickScore loan.³⁵⁸

Finding of Fact No. 148: Either before or after the approval of the loan, if Credit Manager Bushman had learned that Vu had a practice of paying Respondent for household expenses from ezMed’s deposit account, or that Respondent had any expectations of receiving such payments in the future, he would have asked Respondent to recuse herself from all matters related to ezMed’s accounts, which he would have assigned to a different Relationship Manager.³⁵⁹ As administered by the Bank, in order to maintain the objectivity and legitimacy of the underwriting process and lending decision, it was 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.³⁶⁰

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

Finding of Fact No. 149: At no point during the relevant period, including when ezMed was applying for the QuickScore loan, did Respondent disclose to the Human Resources office, Bank Management (including Regional Operations Manager Ingram and Credit Manager

³⁵² EC SD Ex. 40 (Loan Agreement), at *829.

³⁵³ *Id.* at *829, 832.

³⁵⁴ See EC SD Ex. 4 (Bushman Decl.) ¶ 63; EC SD Ex. 9(Ingram Decl.) ¶ 44.

³⁵⁵ EC SD Ex. 4 (Bushman Decl.) ¶ 63.

³⁵⁶ *Id.* ¶ 64.

³⁵⁷ *Id.* ¶ 65.

³⁵⁸ *Id.*

³⁵⁹ *Id.* ¶ 66.

³⁶⁰ *Id.*

Bushman) or underwriting staff (Credit Analyst Yushak) that ezMed or Vu owed her money, or that she expected repayment from ezMed.³⁶¹

Finding of Fact No. 150: Unreported personal debts owed by ezMed would not have appeared on ezMed’s credit report as generated by credit reporting agencies.³⁶²

Finding of Fact No. 151: As administered by the Bank, 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 were expected to disclose on the loan application, under “Purpose of Credit Request,” that loan proceeds would be used for “debt consolidation.”³⁶³

Conclusion of Law No. 5: Pursuant to the Code of Conduct and prudent banking practices, Respondent was required to disclose such interests in ezMed to Bank Management or the Human Resources office.³⁶⁴

Finding of Fact No. 152: 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.³⁶⁵ Credit Manager Bushman also would have expected Respondent 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.³⁶⁶ Had Vu or Respondent 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.³⁶⁷

Finding of Fact No. 153: Had Credit Manager Bushman known that ezMed owed debt to the spouse of a principal, where such spouse was acting as a Relationship Manager of the Bank for ezMed, he would have asked for evidence of the existence of the loan between ezMed and Respondent, including at the very least a written promissory note, and evidence of the intended and actual use of such debt.³⁶⁸ Repayment of corporate debts incurred for purposes of paying non-business expenses, for example, would not be a permissible use of a QuickScore loan.³⁶⁹ Credit Manager Bushman would have been highly skeptical of the legitimacy of informal debts held between a husband (or his company) and wife.³⁷⁰

Conclusion of Law No. 6: 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.³⁷¹ Pursuant to the Code of Conduct, Respondent

³⁶¹ 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).

³⁶² EC SD Ex. 4 (Bushman Decl.) ¶¶ 68.

³⁶³ See, e.g., EC SD Ex. 35 (Modified Loan Application) at *998; EC SD Ex. 4 (Bushman Decl.) ¶ 70.

³⁶⁴ See EC SD Ex. 4 (Bushman Decl.) ¶ 73 & EC SD Ex. 9 (Ingram Decl.) ¶ 48.

³⁶⁵ See EC SD Ex. 4 (Bushman Decl.) ¶ 71.

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.* ¶ 72.

³⁶⁹ *Id.*

³⁷⁰ *Id.* ¶ 76.

³⁷¹ *Id.* ¶ 73.

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.³⁷²

Finding of Fact No. 154: 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.³⁷³

Finding of Fact No. 155: Had Credit Manager Bushman known that ezMed was indebted to Respondent and that loan proceeds would be used, even in part, to repay such debts, or that Respondent expected to receive any payments from ezMed as repayments for prior loans, he would have required Respondent 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.³⁷⁴ Pursuant to the Bank’s 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 – be recused from transactions in which they have a familial or financial interest.³⁷⁵

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

Finding of Fact No. 156: Respondent 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 Respondent’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.³⁷⁶ Nor did Respondent disclose that these payments were made with funds ezMed obtained from its line of credit.³⁷⁷

Finding of Fact No. 157: Had Credit Manager Bushman learned after the loan was approved that ezMed’s loan proceeds had been used to pay Respondent 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.³⁷⁸

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

Enforcement Counsel averred that at no point did Respondent disclose to Bank Management (including Regional Operations Manager Ingram and Credit Manager Bushman) or

³⁷² *Id.*

³⁷³ *Id.* ¶ 74.

³⁷⁴ *Id.* ¶ 75.

³⁷⁵ *Id.*

³⁷⁶ See *id.* ¶¶ 61, 65, 68, 69; EC SD Ex. 9 (Ingram Decl.) ¶ 43, 47; EC SD Ex. 36 (Loan Transfer Approval Form).

³⁷⁷ 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).

³⁷⁸ EC SD Ex. 4 (Bushman Decl.) ¶ 67.

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;³⁷⁹ 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."³⁸⁰ In further support, they presented Ms. Ingram's Declaration, stating the same.³⁸¹

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 together for over 30 years" and Respondent "was never privy to how Vu operates and conducts Vu's business."³⁸²

The record reflects, however, that Respondent represented that she had acquired an ownership interest in ezMed. Tax filings for 2017 also required Respondent to identify all income received during the calendar year.³⁸³ In response, Respondent, or the individual who prepared the 2017 Form 1040 on Respondent's behalf, listed her various sources of income,³⁸⁴ and included a nonpassive loss for \$16,460 based on the K-1 ezMed issued to Respondent for that year.³⁸⁵ This deduction reduced Respondent's federal taxable income for 2017 by \$16,460.³⁸⁶

As Enforcement Counsel persuasively argue, by reaping the tax benefit based on ezMed's losses, "either Ly-Vu was a shareholder of ezMed, or she obtained a tax benefit to which she was not legally entitled."³⁸⁷ During the hearing, Respondent confirmed that she sought and obtained such a tax benefit, and provided this explanation:

³⁷⁹ EC SD Ex. 36.

³⁸⁰ *Id.* ¶ 77.

³⁸¹ EC SD Ex. 9 (Ingram Decl.) ¶ 49.

³⁸² 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.

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*; see also *id.* at *015 (Schedule E, reporting Respondent's nonpassive loss of \$16,460 from her ownership interest in ezMed).

³⁸⁶ Respondent's 2017 Federal and State Tax Filings ("Ly-Vu Tax Filings (2017)"), NGUYEN_0001 (EC SD Ex. 32) at *015 (Item 17)

³⁸⁷ Enforcement Counsel's Post-Hearing Brief at 10, n. 57: "Schedule K-1s allow a corporation's shareholders to claim their share of that corporation's income, deductions or credits. See U.S. Dept. of Treasury, Internal Revenue Service, Shareholder's Instructions for Schedule K-1 (Form 1120-S) (2019), <https://www.irs.gov/instructions/i1120ssk> ("IRS Schedule K-1 Guidance"); see also 26 U.S.C. § 1366(d) (explaining how shareholders of an S-corporation are to determine their losses and their deductions for any taxable year). Ly-Vu did not claim ezMed's 2017 losses in a joint tax filing with her husband, as she did for the 2015 and 2016 tax years; rather, Ly-Vu filed her 2017 taxes individually, as this Court has already concluded. See Summ. Disposition Order at 34. And, Ly-Vu certainly understands the difference, as she introduced jointly filed tax returns as her own exhibits during these proceedings. See Jt. Exhs. 54 & 55 (2015 and 2016 Tax Filings)."

I've always filed my taxes separate from my husband, ever since I, you know, had to pay taxes. So it was always beneficial for me to file separately according to my CPA. So I've always done it that way. But in these two years that my husband had to file with me was [sic] because of the Affordable Care Act where he had to have insurance. He had to carry insurance. And I carried him on my insurance because I work full time, and I was offered insurance. So he's on my insurance for that reason. And so these two years we had to file our taxes together.

And when Michael gives me a K-1, a loss, I just give it to my CPA to put it with my taxes. So I don't question it. If it didn't benefit me, my CPA would have told me that, you know, 'You shouldn't take this. Don't put it to your taxes.' But it was always helpful to me to have those. So I never questioned it. But I don't have anything to do with his business. I don't get involved. It's just how we've always been, you know, being married together, we keep our financials separately. It's not the traditional way, but it works for us.³⁸⁸

Finding of Fact No. 158: Without attempting to determine whether Respondent properly benefitted from losses attributed to ezMed, the record as a whole establishes that the interest she claimed through her tax reporting was sufficient to give rise to her fiduciary obligation to disclose the interest to the Bank.

Finding of Fact No. 159: 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, Respondent would have had an obligation to report her personal interest in the line of credit to Bank³⁸⁹

Finding of Fact No. 160: If Credit Manager Bushman had learned that Respondent 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.³⁹⁰

Respondent did not disclose accurate information about, or correct false information on, the loan application

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

Finding of Fact No. 161: Under the Bank's procedures for QuickScore loan applications, applicants had to indicate that loan proceeds were to be used for a business-related purpose, and certify that they intended to comply with this requirement.³⁹¹ Vu indicated on ezMed's loan application that the proceeds would be used for "working capital" and "equipment/purchase."³⁹²

Finding of Fact No. 162: As a Branch Service Manager with more than 30 years of experience, and ezMed's Relationship Manager with respect to the instant transaction,

³⁸⁸ Tr. at 114-15.

³⁸⁹ Management. EC SD Ex. 4 (Bushman Decl.) ¶ 78.

³⁹⁰ *Id.* ¶ 79.

³⁹¹ See, supra, ¶¶ 95-96.

³⁹² *Id.*

Respondent was aware in November and December 2016 that proceeds from the QuickScore loan could not be used for personal expenses.³⁹³

Finding of Fact No. 163: Respondent's personal household expenses did not relate to ezMed's business.³⁹⁴

Finding of Fact No. 164: At no point, including during the period when ezMed was applying for the QuickScore loan, did Respondent disclose to anyone at the Bank that she knew ezMed's funds would be used, at least in part, for non-business purposes (including to pay her for household expenses).³⁹⁵ Further, Respondent did not require Vu to correct ezMed's loan application when she forwarded it to the Bank as ezMed's Relationship Manager.³⁹⁶

Finding of Fact No. 165: Credit Manager Bushman would have expected Respondent, 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.³⁹⁷

Respondent did not disclose that Vu had been convicted of a felony

Finding of Fact No. 166: QuickScore loan applications also required guarantors to indicate whether they had been convicted of any felonies.³⁹⁸ As the guarantor on ezMed's loan, Vu falsely indicated on the loan application that he had never been convicted of a felony.³⁹⁹

Finding of Fact No. 167: 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 Respondent.⁴⁰⁰

Finding of Fact No. 168: Credit Manager Bushman would have expected Respondent, who was serving as ezMed's Relationship Manager with the Bank, to disclose the fact that Vu 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.⁴⁰¹ Had Respondent 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.⁴⁰²

³⁹³ See EC SD Ex. 40 (Loan Agreement) at *829; EC SD Ex. 35 (Modified Loan Application) at *998.

³⁹⁴ 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.").

³⁹⁵ 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)

³⁹⁶ See EC SD Ex. 4 (Bushman Decl.) ¶¶ 53, 80.

³⁹⁷ EC SD Ex. 4 (Bushman Decl.) ¶ 80.

³⁹⁸ See EC SD Ex. 35 (Modified Loan Application) at *999.

³⁹⁹ *Id.*

⁴⁰⁰ See, *supra*, ¶ 50.

⁴⁰¹ See EC SD Ex. 4 (Bushman Decl.) ¶ 81.

⁴⁰² *Id.*

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

Finding of Fact No. 169: 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.⁴⁰³

Finding of Fact No. 170: 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.⁴⁰⁴

Finding of Fact No. 171: Respondent signed (either by hand or electronically) and submitted Statements of Personal Interest on November 29, 2016, and September 5, 2017, through which she falsely denied having any interest in any business or customer of the Bank.⁴⁰⁵

Finding of Fact No. 172: Respondent made several false statements or omissions through her responses to those personal interest questionnaires.⁴⁰⁶

Finding of Fact No. 173: The personal interest questionnaires asked whether Respondent had “accepted anything of value directly or indirectly from anyone in connection with the business of the [Bank].”⁴⁰⁷ On both forms, Respondent responded falsely to this question by checking the box next to “no.”⁴⁰⁸

Finding of Fact No. 174: Proceeds from the Bank’s line of credit to ezMed funded ezMed’s payments to Respondent.⁴⁰⁹ Accordingly, Respondent should have checked the box next to “yes” in response to this question on the 2017 Personal Interest Statement.⁴¹⁰

Finding of Fact No. 175: The personal interest questionnaires asked, in a multi-part question, whether Respondent 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.”⁴¹¹ On both forms, Respondent falsely responded to these sub-questions by checking the boxes next to “no.”⁴¹²

Finding of Fact No. 176: EzMed was either wholly or at least partly owned by Vu, Respondent’s husband; and Respondent had a financial interest in ezMed (in the form of 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 Respondent.⁴¹³

⁴⁰³ See EC SD Ex. 9 (Ingram Decl.) ¶ 52; see also Exs. 6 & 7 (Personal Interest Statements 2016 & 2017).

⁴⁰⁴ EC SD Ex. 9 (Ingram Decl.) ¶ 58.

⁴⁰⁵ See Exs. 6 & 7 (Personal Interest Statements 2016 & 2017).

⁴⁰⁶ EC SD Ex. 9 (Ingram Decl.) ¶¶ 54-57.

⁴⁰⁷ EC SD Ex. 6 (Personal Interest Statement (2016)), at *476; EC SD Ex. 7 (Personal Interest Statement (2017)), at *486.

⁴⁰⁸ *Id.*

⁴⁰⁹ EC SD Ex. 4 (Bushman Decl.) ¶¶ 55, 69; see, *supra*, ¶¶ 113-135

⁴¹⁰ EC SD Ex. 9 (Ingram Decl.) ¶ 55.

⁴¹¹ EC SD Ex. 6 (Personal Interest Statement (2016)), at *476; EC SD Ex. 7 (Personal Interest Statement (2017)), at *486.

⁴¹² *Id.*

⁴¹³ See, *supra*, ¶¶ 53-62 (ownership), ¶¶ 66-70 (Ly-Vu’s financial interest), & ¶¶ 112-135 (payments to Ly-Vu).

Finding of Fact No. 177: Assuming the 2017 Schedule K-1 ezMed issued to Respondent accurately identified ezMed’s shareholders for the year (presumably so, given that those documents were filed with the IRS and FSB), then Respondent acquired a majority stake in ezMed in 2017, constituting an additional financial interest Respondent claimed to personally hold in the company.⁴¹⁴

Finding of Fact No. 178: Respondent improperly withheld the foregoing information from the Bank during ezMed’s application process and thereafter and, because she was serving as the Bank’s 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.⁴¹⁵ Accordingly, Respondent should have checked the boxes next to “yes” in response to each of these sub-questions on the 2017 Personal Interest Statement.⁴¹⁶

Finding of Fact No. 179: The personal interest questionnaires asked Respondent 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].”⁴¹⁷ On both forms, Respondent responded to this question by checking the box next to “no.”⁴¹⁸

Finding of Fact No. 180: Respondent, however, 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.⁴¹⁹ Each circumstance placed the Bank’s assets at risk.⁴²⁰ Accordingly, Respondent should have checked the box next to “yes” in response to this question.⁴²¹

Finding of Fact No. 181: Had Respondent responded to any of the foregoing questions truthfully, the Bank would have been alerted to Respondent’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.⁴²²

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

Enforcement Counsel aver that 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 Respondent 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.

⁴¹⁴ See EC SD Ex. 28 (Schedule K-1 (2017)) at *005.

⁴¹⁵ EC SD Ex. 9 (Ingram Decl.) ¶ 56; EC SD Ex. 4 (Bushman Decl.) ¶¶ 51-81; see also, *supra*, ¶¶ 136-173.

⁴¹⁶ EC SD Ex. 9 (Ingram Decl.) ¶ 56.

⁴¹⁷ EC SD Ex. 6 (Personal Interest Statement (2016)), at *476; EC SD Ex. 7 (Personal Interest Statement (2017)), at *486.

⁴¹⁸ *Id.*

⁴¹⁹ See, *supra*, ¶¶ 136-173; EC SD Ex. 9 (Ingram Decl.) ¶ 57.

⁴²⁰ EC SD Ex. 9 (Ingram Decl.) ¶ 57.

⁴²¹ *Id.* ¶ 57.

⁴²² *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.⁴²³

Respondent did not dispute the language found in the Code of Conduct cited by Enforcement Counsel, nor did 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."⁴²⁴

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.

Evidence in the record, including Respondent's testimony, established by a preponderance that Respondent's assertion that she did not expect to receive proceeds from the Bank's loan to ezMed is not credible. If it came as a surprise to Respondent the first time that she received money from ezMed shortly after the Bank opened its line of credit to the company, any claim of surprise afterwards is wholly not credible.

The record reflects that Respondent knew ezMed had little cash flow and that the company had in the past relied on loans provided by Respondent to maintain liquidity.⁴²⁵ Substantial evidence establishes that given the low volume of incoming cash generated through ezMed's business, and given Respondent's knowledge of both the lack of such cash and the correlation between when the line of credit was opened and when she started receiving payments from her husband and ezMed, Respondent had been made aware of the connection between ezMed's receipt of loan proceeds and her receipt of payments from ezMed.⁴²⁶ Given also that the payments from ezMed were made by checks that stated the purpose for such payments falsely reflected work by Respondent that Respondent herself admitted she never performed for the company, there is substantial preponderant evidence establishing that Respondent expected to receive funds that had been secured by ezMed through the bank loan Respondent helped ezMed obtain.

⁴²³ EC SD Ex. 2 at FRB-MLV-0195469; EC SD Ex. 3 at FRB-MLV-0195480.

⁴²⁴ 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.

⁴²⁵ Tr. at 55-57; 66, 87-88; Jt. Exh. 54 (2015 Tax Filing) at *534 (reporting \$22,362 in losses from ezMed) & Jt. Exh. 55 (2016 Tax Filing) at *553 (reporting \$32,541 in losses from ezMed).

⁴²⁶ Tr. at 50, 62-64.

During the hearing, Respondent testified regarding her receipt of these funds. She stated:

So [Mr. Vu] gives me money for what I have to pay for our bills for the household, and when he can he gives it to me. When he can't, if I can pay it, I pay it myself. So – but that's just how we handle our finances. And because we're husband and wife, if he can't pay me, I'm not going to yell or anything. I just take it for what it is.⁴²⁷

* * *

I never expected anything from my husband. If he's able to pay me back or give me money for our household expenses, he gives me the money. I don't question it, your Honor, because if I'm able – if he's able to hand me something, whether it's a check or cash, then I just take it from him because he wouldn't have given it to me if he's not able to cover it. So I never question it. So if he gave me a check, then I just took it for what it is.⁴²⁸

Given the preponderant evidence regarding the circumstances through which Respondent received these checks, and given the substantial question arising when it was clear the checks' stated purposes were false and such falsehood was known to Respondent, I find Respondent's assertion that she did not expect the loan proceeds to be paid to her to be not credible. Instead, the preponderant evidence established that Respondent did expect to have loans she extended to ezMed to be repaid by proceeds of the loan she helped her husband secure for ezMed.

Finding of Fact No. 182: 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 Respondent 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.

Respondent's Other Conflicts of Interest Involving Family and Friends

Finding of Fact No. 183: Justin Enderton and Eddie Guerrero are Respondent's brothers-in-law.⁴²⁹

Finding of Fact No. 184: 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.⁴³⁰

Finding of Fact No. 185: 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.⁴³¹ On or around June 13, 2016, on Guerrero's request, the Bank increased the credit

⁴²⁷ Tr. at 115.

⁴²⁸ *Id.* at 118-19.

⁴²⁹ 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.

⁴³⁰ See en4ormLoan Approval, FRB-MLV-0194668 (EC SD Ex. 50); EC SD Ex. 20 (Enderton Dep. Transcr.) 13:5-10.

⁴³¹ See MLNEM Loan Modification Agreement, FRB-MLV-0194468 (EC SD Ex. 51).

line to \$50,000.⁴³² On or around September 17, 2015, Pavescapes, a second company owned by Guerrero, obtained a \$25,000 commercial line of credit from the Bank.⁴³³ On or around June 13, 2016, on Guerrero's request, the Bank increased the loan to \$50,000.⁴³⁴

Finding of Fact No. 186: Respondent 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.⁴³⁵

Finding of Fact No. 187: On or around March 17, 2015, Benedict Law, owned by Benedict, obtained a \$25,000 line of credit from the Bank.⁴³⁶ In April 2017 and again in July 2017, Benedict Law received two extensions on his line of credit from PPB.⁴³⁷ Throughout this period, Benedict was a business partner with Vu, and he co-owned Respondent's home with her.⁴³⁸

Finding of Fact No. 188: Respondent 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.⁴³⁹

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

Finding of Fact No. 189: 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.⁴⁴⁰

Finding of Fact No. 190: 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.⁴⁴¹ Credit Manager Sheldon emailed Respondent and Credit Analyst Yushak, stating, "Please review banking relationship. Borrower deposits do not appear to be consistent

⁴³² *Id.*

⁴³³ See Pavescapes Loan Modification Agreement, FRB-MLV-0194239 (EC SD Ex. 52).

⁴³⁴ *Id.*

⁴³⁵ 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.

⁴³⁶ See Benedict Law Loan Modification Agreement, FRBMLV-0194028 (EC SD Ex. 53).

⁴³⁷ *Id.*

⁴³⁸ 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 Respondent 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. 48 Transcr.) 12:9-13 (testifying that Respondent and Benedict co-own Respondent's house), 32:14-24 (Benedict “has been a friend, a working partner for over 20 years”).

⁴³⁹ 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 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).

⁴⁴⁰ See EC SD Ex. 49 (Oct. 2017 Sheldon Email).

⁴⁴¹ *Id.* at *084; EC SD Ex. 43 at *029.

with a full banking relationship. Borrower should be informed of non-renewal if banking is not maintained.”⁴⁴²

Finding of Fact No. 191: Respondent 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.”⁴⁴³

Finding of Fact No. 192: The same morning, Credit Manager Sheldon replied to Respondent, “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.”⁴⁴⁴

Finding of Fact No. 193: 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.”⁴⁴⁵

Finding of Fact No. 194: On or around December 18, 2017, Brian Aguirre, First Vice President, Senior Human Resources Business Partner Manager and Steve Arnold, General Counsel, asked Respondent about the payments she had received from ezMed.⁴⁴⁶

Finding of Fact No. 195: Shortly thereafter, HR Manager Aguirre summarized the December 18, 2017 meeting between himself, General Counsel Arnold, and Respondent 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’ or ‘contract work’ in the memo line for his tax purposes although she used the money for household expenses, bills, etc.”⁴⁴⁷

Finding of Fact No. 196: On December 18, 2017, the day Respondent spoke with HR Manager Aguirre and General Counsel Arnold, Bank Employee B, a teller and subordinate of Respondent at the Newport Beach branch, changed internal Bank records to remove Respondent as the listed Relationship Manager on ezMed’s deposit account, and replaced Respondent’s initials with those of another Bank employee.⁴⁴⁸ In her comparatively senior role at the Newport Beach branch, Respondent would have had authority to request that Bank Employee B make this change to the ezMed account.⁴⁴⁹ BSA Officer Benkey investigated the matter, and held conversations with senior Bank staff in December 2017, but was unable to identify any other

⁴⁴² See EC SD Ex. 49 (Oct. 2017 Sheldon Email) at *084.

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ Dec. 11, 2017 Sheldon Email, FRB-MLV-0196090 (EC SD Ex. 54) at *091.

⁴⁴⁶ EC SD Ex. 9 (Ingram Decl.) at ¶ 34.

⁴⁴⁷ Dec. 28, 2017 Aguirre Email, FRB-MLV-0196082 (EC SD Ex. 55).

⁴⁴⁸ 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).

⁴⁴⁹ *Id.* ¶ 10.

individual at the Newport Beach branch or corporate offices who requested that Bank Employee B to make this change.⁴⁵⁰ The Bank no longer employs Bank Employee B.⁴⁵¹

Finding of Fact No. 197: 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 Respondent (“Extension 226 – Mai”).⁴⁵² By the time BSA Officer Benkey conducted the same internet search the following day, however, ezMed had removed the reference to Respondent’s name from its “Contact Us” page, and replaced “Extension 226 – Mai” with “Extension 226 – Christopher.”⁴⁵³ Vu testified that he made the website change from “Mai” to “Christopher.”⁴⁵⁴

Finding of Fact No. 198: On the morning of January 2, 2018, HR Manager Aguirre and Respondent’s supervisor, Regional Operations Manager Ingram, met with Respondent at the Bank’s Newport Beach branch.⁴⁵⁵ Regional Operations Manager Ingram informed Respondent 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, 2018.⁴⁵⁶

The Bank Suffered a Loss

Finding of Fact No. 199: On December 10, 2017, the ezMed line of credit matured and, shortly thereafter, the Bank decided not to renew the line of credit due to the conflict of interest created by Respondent’s relationship to Vu, the loan’s guarantor.⁴⁵⁷

Finding of Fact No. 200: The Bank attempted to work with Vu to obtain a repayment plan, but those efforts failed when Respondent refused to authorize Vu to disclose their joint personal tax returns.⁴⁵⁸ 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 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. . . .”⁴⁵⁹

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.* at ¶ 9.

⁴⁵² Contact Us Page, FRB-MLV-0195864 (EC SD Ex. 57); EC SD Ex. 56(Benkey Decl.) ¶ 12.

⁴⁵³ EC SD Ex. 57(Contact Us Page); EC SD Ex. 56 (Benkey Decl.) ¶ 13.

⁴⁵⁴ EC SD Ex. 16 (Vu Dep. Transcr.) 88:5-10.

⁴⁵⁵ EC SD Ex. 9 (Ingram Decl.) ¶ 37.

⁴⁵⁶ EC SD Ex. 9 (Ingram Decl.) ¶ 37; EC SD Ex. 1 (Termination Letter); Answer at ¶ 41.

⁴⁵⁷ EC SD Ex. 36 (Loan Transfer Approval Form).

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

Finding of Fact No. 201: On March 29, 2018, the Bank charged off the full principal balance of the loan: \$49,685.⁴⁶⁰ On April 30, 2018, the Bank notified Vu that it was closing ezMed's deposit account with PPB, effective June 1, 2018.⁴⁶¹

Finding of Fact No. 202: 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.⁴⁶² 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.⁴⁶³ In total, the Bank experienced a loss of at least \$56,930 in connection with the ezMed loan.⁴⁶⁴

Finding of Fact No. 203: On August 3, 2018, the court entered a default judgment against Vu and ezMed, ordering them to pay \$56,930.25 to the Bank.⁴⁶⁵ 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.⁴⁶⁶

DISPOSITIVE CONCLUSIONS OF LAW

Conclusion of Law No. 7: Respondent is estopped from disclaiming her ownership interest in ezMed during the 2017 and 2018 tax years.⁴⁶⁷

Conclusion of Law No. 8: By virtue of holding senior operational and managerial positions at PPB, Respondent owed fiduciary duties of loyalty and care to the Bank.⁴⁶⁸

Conclusion of Law No. 9: Respondent's conduct (as described herein and as previously established) constituted a breach of her fiduciary duties to PPB.⁴⁶⁹

Conclusion of Law No. 10: Respondent's conduct (as described herein and as previously established) constituted unsafe or unsound practices.⁴⁷⁰

⁴⁶⁰ EC SD Ex. 56 (Benkey Decl.) ¶ 17; Charge-Off Memorandum, FRB-MLV-0196101 (EC SD Ex. 58).

⁴⁶¹ See Notification of Closure, FRB-MLV-0196095 (EC SD Ex. 59).

⁴⁶² 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.

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*; see also EC SD Ex. 56 (Benkey Decl.) ¶ 18.

⁴⁶⁵ See Judgement, Pacific Premier Bank v. ezMedCloud, Inc., No. 30-2018-00994340 (Aug. 3, 2018), FRB-MLV-0195510 (EC SD Ex. 61).

⁴⁶⁶ EC SD Ex. 16 (Vu Dep. Transcr.) ¶ 75:12-76:4; EC SD Ex. 56 (Benkey Decl.) ¶ 19.

⁴⁶⁷ See *Youngman v. Robert Bosch LLC*, 923 F. Supp. 2d 411, 422 (E.D.N.Y. 2013); *Estate of Ginor v. Landsberg*, 159 F.3d 1346 (2d Cir. 1998); *Robb-Fulton v. Robb*, 23 F.3d 895, 898 (4th Cir. 1994).

⁴⁶⁸ See, e.g., *In re Steven D. Haynes*, No. 11-370e, Final Decision, 2014 WL 3739303 at *31 (F.D.I.C. Feb. 18, 2014); *Gully v. Nat'l. Credit Union Admin.*, 341 F.3d 155, 165 (2d Cir. 2003).

⁴⁶⁹ See, e.g., *In re Steven J. Ellsworth*, No. 11-41, Final Decision, 2016 WL 11597958, at *15 (O.C.C. Mar. 23, 2016); *Michael v. FDIC*, 687 F.3d 337, 351 (7th Cir. 2012); *De La Fuente II v. FDIC*, 332 F.3d 1208, 1222 (9th Cir. 2003); *Seidman v. Office of Thrift Supervision*, 37 F.3d 911, 933-35 (3d Cir. 1994).

⁴⁷⁰ See, e.g., *In re Donald V. Watkins*, No. 17-0154e, Final Decision, 2019 WL 6700075 at *7 (F.D.I.C. Oct. 15, 2019); *In re Michael D. Landry*, No. 95-65e, Final Decision, 1999 WL 440608 at *15 (F.D.I.C. May 25, 1999); and *First Nat'l Bank of Lamarque v. Smith*, 610 F.2d 1258, 1265 (5th Cir. 1980).

Conclusion of Law No. 11: By reason of Respondent’s misconduct (as described herein and as previously established), Respondent received a financial benefit in the form of payments she received from ezMed.⁴⁷¹

Conclusion of Law No. 12: By reason of Respondent’s misconduct (as described herein and as previously established), PPB suffered a financial loss as a result of ezMed’s default on the line of credit in the amount of \$56,930—the amount of the charged off loan, plus interest, fees, and costs incurred in attempting to collect payment from ezMed.⁴⁷²

Conclusion of Law No. 13: Respondent’s misconduct (as described herein and as previously established) involved personal dishonesty.⁴⁷³

Conclusion of Law No. 14: Respondent’s misconduct (as described herein and as previously established) demonstrated willful or continuing disregard for PPB’s safety and soundness.⁴⁷⁴

Conclusion of Law No. 15: Respondent was unjustly enriched in the amount of \$18,700 in connection with her misconduct (as described herein and as previously established).⁴⁷⁵

Date: February 22, 2021

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

⁴⁷¹ See *Seidman*, 37 F.3d at 938.

⁴⁷² See *Pharaon v. Bd. of Governors of the Fed. Reserve Sys.*, 135 F.3d 148, 157 (D.C. Cir. 1998).

⁴⁷³ See, e.g., *In re Lance E. Bauer*, No. 11-21e, Final Decision, 2012 WL 7152170 at *3 (F.D.I.C. Oct. 9, 2012); *De La Fuente II*, 332 F.3d at 1224; *Hutensky v. FDIC*, 82 F.3d 1234, 1241 (2d Cir. 1996); and *Kim v. Office of Thrift Supervision*, 40 F.3d 1050, at 1054 (9th Cir. 1994).

⁴⁷⁴ See *Michael*, 687 F.3d at 352; *De La Fuente II*, 332 F.3d at 1224; *Grubb v. FDIC*, 34 F.3d 956, 962-63 (10th Cir. 1994); *In re Frank E. Jameson*, No. 89-83e, Final Decision, 1990 WL 711218, at *8 (F.D.I.C. June 12, 1990), *aff’d*, 931 F.2d 290 (5th Cir. 1991); *Van Dyke v. Bd. Of Governors of the Fed. Reserve Sys.*, 876 F.2d 1377, 1380 (8th Cir. 1989)).

⁴⁷⁵ See *Rapaport v. OTS*, 59 F.3d 212, 216-17 (D.C. Cir. 1995).

**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

RECOMMENDED ORDER

Having considered the entire record of the proceeding and having found that Respondent Mai Ly-Vu (“Ly-Vu”) engaged in unsafe and unsound practices and breached fiduciary duties she owed to her former employer, Pacific Premier Bank (“PPB”); caused a financial loss to PPB, received a financial gain, and was unjustly enriched by reason of her misconduct; and acted dishonestly and with a willful or continuing disregard for the safety and soundness of PPB, I recommend that the Board of Governors of the Federal Reserve System issue the following Order:

ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that Ly-Vu, without the prior written approval of the Board of Governors and, where necessary pursuant to section 8(e)(7)(B) of the FDI Act, 12 U.S.C. § 1818(e)(7)(B), another Federal financial institution regulatory agency, is hereby and henceforth prohibited from:

- (a) participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), including, but not limited to, any insured depository institution or any holding company of an insured depository institution, or any subsidiary of such holding company, or any foreign bank or company to which subsection (a) of 12 U.S.C. § 3106 applies and any subsidiary of such foreign bank or company;
- (b) soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A);

- (c) violating any voting agreement previously approved by any Federal banking agency; or
- (d) voting for a director, or serving or acting as an institution-affiliated party, as defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), such as an officer, director or employee, in any institution described in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A).

IT IS FURTHER ORDERED, pursuant to section 8(b)(6) of the FDI Act, 12 U.S.C. § 1818(b)(6), that Ly-Vu shall pay restitution to PPB in the amount of \$18,700.

This Order will become effective upon issuance, and each provision of this Order shall remain fully effective and enforceable until expressly stayed, modified, terminated, or suspended in writing by the Board of Governors of the Federal Reserve System.

Dated:

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

CERTIFICATE OF SERVICE

On February 22, 2021 I served the foregoing Recommended Findings of Fact, Recommended Conclusions of Law, and Recommended Decision with Proposed Order, Certified Index of Proceedings, and Administrative Record by electronic mail upon:

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

Also on February 22, 2021 I served the foregoing Recommended Findings of Fact, Recommended Conclusions of Law, and Recommended Decision with Proposed Order, and Certified Index of Proceedings by electronic mail upon:

Enforcement Counsel:

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