

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

IN THE MATTER OF:)

FIRST NATIONAL BANK OF MARIN)
LAS VEGAS, NEVADA)

CONSENT ORDER

The Comptroller of the Currency of the United States of America (Comptroller) through his National Bank Examiner, has examined First National Bank of Marin, N.A., Las Vegas, Nevada (Bank).

The Comptroller, by and through his authorized representative, and the Bank, by and through its duly elected and acting Board of Directors (Board), have executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated December 3, 2001 (“Stipulation and Consent”). By this Stipulation and Consent, that is incorporated by reference, the Bank has agreed and consented to the issuance of this Consent Order (Order) by the Comptroller.

Pursuant to the authority vested in him by the laws and regulations of the United States, including 12 U.S.C. § 484, the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, and 12 C.F.R. § 7.4000, the Comptroller hereby orders that:

ARTICLE I

RESTITUTION AND RESERVE

(1) Within ten (10) days of the Order Date, the Bank shall reserve or deposit into a segregated deposit account an amount not less than four million dollars (\$4,000,000), as a reserve for the restitution required by this Article. Within sixty (60) days of the Order Date, the Bank shall reserve or deposit into a segregated deposit account such additional amounts as are necessary to fully fund the restitution required by this Article.

(2) Subject to paragraph (2)(c) of this Article, the Bank shall pay restitution, as required by this Article, to the following consumers who applied for the Bank's credit card between January 1, 1998, and June 1, 2001:

- (a) any consumer who received a credit card with \$50 or less in available credit at account opening and, within sixty (60) days after the credit card was mailed to the consumer, cancelled the credit card account;
- (b) any consumer who did not obtain a credit card but, during the application process:
 - (i) received a communication from the Bank disclosing that the consumer had been approved for a credit card and stating either that the consumer would have \$50 or less in available credit at account opening, or that the consumer would have little or no available credit at account opening; and

(ii) after receiving such a communication either cancelled the application, or failed to complete the application process necessary to receive a credit card.

(c) the Bank need not pay restitution to any consumer otherwise within paragraph (2) of this Article if the Bank's records unambiguously demonstrate, to the satisfaction of the OCC, that the consumer cancelled the account or the application, or failed to complete the application process, for a reason other than the amount of available credit at account opening.

(3) For purposes of paragraph (2)(a) of this Article, a consumer will be deemed to have cancelled the credit card account within sixty (60) days after the credit card was mailed to the consumer if, regardless of whether the consumer complied with any additional Bank requirements, such as submitting the request in writing, the Bank's records with regard to that consumer:

(a) contain an entry, dated as occurring within sixty (60) days after the credit card was mailed to the consumer, that indicates the consumer orally or in writing expressed an intention to cancel or close the account, and

(b) do not indicate that this intention was later withdrawn.

(4) The amount of restitution payable by the Bank to each consumer described in paragraph (2) of this Article shall be the sum of the amounts in paragraphs (4)(a) through (4)(e), reduced by any such amounts previously refunded:

(a) any application, enrollment, annual, mailing, processing or comparable fees that were paid by the consumer before receiving the card;

- (b) any application, enrollment, annual, mailing, processing or comparable fees that were charged to the consumer's account during the first two billing cycles and were paid by the consumer at any time;
- (c) any fees that were charged to the consumer's account because the consumer exceeded the credit limit on the account during the first two billing cycles, and were paid by the consumer at any time;
- (d) any fees or finance charges that were charged to the consumer's account because the consumer failed to make the required minimum payment by the contractual due date during either or both of the first two billing cycles, and were paid by the consumer at any time; and
- (e) interest, from each date a payment subject to restitution pursuant to any of paragraphs (4)(a) through (4)(d) of this Article was received by the Bank or its agent, and continuing through the Order Date, at a rate of eight percent (8%) per annum.
- (f) for purposes of calculating the amounts paid by the consumer under paragraph (4) of this Article, payments made on the consumer's account will be treated as if those payments had been allocated by the Bank first to pay fees and finance charges within paragraphs (4)(b) through (4)(d) of this Article.

(5) To the extent that a fee or finance charge otherwise within any of paragraphs 4(b) through (4)(d) of this Article has not been paid by the consumer, and has either been charged off by the Bank, or is currently outstanding, the Bank shall, within thirty (30) days of receiving OCC approval pursuant to paragraph (4) of Article VI:

- (a) reduce the amount charged off or currently outstanding, as the case may be, by subtracting such fees and finance charges, and any additional finance charges related to such fees and finance charges;
- (b) notify the consumer of such reduction; and
- (c) make the appropriate report to the appropriate credit reporting agencies.

(6) Regardless of whether the amount charged was paid or charged off, the Bank shall, within thirty (30) days of receiving OCC approval pursuant to paragraph (4) of Article VI, reverse any adverse credit report that was made in relation to a charge otherwise within any of paragraphs (4)(b) through (4)(d) of this Article.

ARTICLE II

AVAILABLE CREDIT PROSPECTIVE RELIEF

(1) The Bank shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, to any consumer concerning what available credit the consumer will receive at account opening.

(2) The Bank shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, to any consumer concerning the cost or operation of the Bank's credit card.

(3) If the credit card may be secured in whole or in part by a savings deposit that is charged against the credit card, the Bank shall not use a phrase such as "SEND NO MONEY FOR A SAVINGS DEPOSIT" unless the Bank clearly and conspicuously discloses, in close proximity to such phrase, that a savings deposit will be charged against the card, that the amount of available credit at account opening will be reduced by the amount of the charge for the

savings deposit, and that the consumer will have to make additional payments in order to make available that portion of the credit line used by the charge for the savings deposit.

(4) If under a credit card program the Bank could approve a consumer for a card with little or no available credit at account opening, the Bank shall not represent, either expressly or by implication, that any consumer who applies may be able to employ the card for uses that require available credit, unless the Bank clearly and conspicuously discloses, in close proximity to any such representation, that the consumer may be approved only for a card with little or no available credit upon account opening, and that in such circumstances the consumer may not be able to employ the card for these uses until the consumer makes additional payments on the account.

(5) If the solicitation discloses a range of credit lines for which the consumer may be approved, and if the consumer may be approved for a credit line that would result in little or no available credit on the consumer's credit card account at account opening, the Bank shall clearly and conspicuously disclose that if the consumer is approved for that credit line the consumer will have little or no available credit at account opening.

(6) The Bank shall comply with paragraphs (3) through (5) of this Article within thirty (30) days of the Order Date.

ARTICLE III

RANGE OF CREDIT TERMS PROSPECTIVE RELIEF

(1) The Bank shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, to any consumer concerning what credit line the consumer will receive if the consumer submits an application.

(2) The Bank shall not use “guaranteed,” “pre-approved,” or similar terms in a misleading or deceptive manner on or with a communication that solicits an application for credit.

(3) The Bank shall not represent, directly or by implication, that a consumer is “guaranteed” approval or “pre-approved” for a range of credit terms, such as a range of credit lines, unless the Bank

- (a) has a reasonable, documented, basis to believe that a consumer who applies will be approved for a term within the range disclosed; and
- (b) clearly and conspicuously discloses, in connection with each use of “pre-approved” or “guaranteed,” the specific limitations on the consumer receiving any particular term within the range of terms disclosed.

(4) The Bank shall not represent, directly or indirectly, that a consumer is “guaranteed” approval or “pre-approved” for particular credit terms or a range of credit terms unless such a representation is consistent with safe and sound bank operations.

(5) In any communication that solicits a credit card application, if the Bank refers to a credit card term, but the consumer may be approved for a less favorable credit card term, the Bank shall clearly and conspicuously disclose:

(a) that the consumer may be approved for a less favorable credit card term;
and

(b) the specific details of the less favorable credit card term.

(6) If the solicitation disclosed a range of credit lines, and as a consequence of being approved for a credit line smaller than the largest credit line disclosed there will be little or no available credit on the consumer's credit card account at account opening, the Bank shall clearly and conspicuously disclose, in addition to any disclosures required by Regulation Z or other applicable law, before the card is activated for the consumer's use:

(a) that, due to amounts charged against the account, when issued the consumer's credit card account will have \$[specify amount] in available credit for the consumer's use at account opening; and

(b) that before making purchases, cash advances, or other debits to the account in excess of the available credit, the consumer must make payments to the Bank to free up available credit for the consumer's use.

(7) The Bank shall comply with paragraphs (3) through (6) of this Article within thirty (30) days of the Order Date.

ARTICLE IV

MONITORING PROGRAM

(1) Within ninety (90) days of the Order Date, the Bank shall implement a written program to identify and evaluate communications from consumers who claim that they did not understand the Bank's solicitations. The Bank shall review, analyze, and take appropriate action in response to such communications. As part of this program, the Bank shall on an ongoing

basis evaluate the risk that the Bank's solicitations are misleading or deceptive or in violation of other law, and determine whether the Bank's solicitations should be modified or revised accordingly.

ARTICLE V

PROGRESS REPORTING - QUARTERLY

(1) The Board shall submit progress reports to Assistant Deputy Comptroller for Credit Card Banks (West), with a copy to the National Bank Examiner who is Examiner in Charge for the Bank, according to the schedule in paragraph (3) of this Article. These reports shall set forth in detail:

- (a) actions taken to comply with each Article of the Order;
- (b) results of those actions; and
- (c) a description of the actions needed to achieve full compliance with each Article of this Order.

(2) The progress reports should also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the April 3, 2001, Report of Examination or in any future Report of Examination.

(3) The first progress report shall be submitted for the period ending December 31, 2001, and will be due within fifteen (15) days of that date. Thereafter, progress reports will be due within fifteen (15) days after the calendar quarter end, with the next report, covering the period ending March 31, 2002, due within fifteen (15) days after the quarter end.

ARTICLE VI

METHOD OF PAYMENT

(1) The Bank shall make the restitution and reimbursement payments required by this Order in conformity with this Article.

(2) The Bank shall use reasonable efforts to perform the following within one hundred and twenty (120) days from the Order Date, and shall in any event complete the following no later than one hundred and eighty (180) days from the Order Date:

- (a) compile a list of the consumers to whom a payment is required to be made pursuant to this Order (hereinafter “Payment List”), which Payment List shall identify, for each consumer: (i) the consumer’s name and address; (ii) the consumer’s account number or pre-account reservation number; (iii) the paragraph or paragraphs of this Order pursuant to which a payment is required to be made to the consumer; (iv) the dollar amount of the payment attributable to each paragraph; and (v) if amounts were charged off on the consumer’s account, the total dollar amount of restitution payment remaining after applying the offset calculation in paragraph (7) of this Article;
- (b) before compiling the Payment List,
 - (i) update the addresses for all consumers to whom the Bank is required to make a payment by conducting a standard address search using the National Change of Address System (NCOA) and,
 - (ii) in connection with this updating, if the most recent Bank communication sent to the consumer’s last known address was

returned as undeliverable, and the Bank is unable to obtain an updated address through the NCOA, designate the consumer on the Payment List as a “Consumer With an Address Subject to Confirmation;”

- (c) prepare a detailed written description of the processes by which the Bank identified the consumers, determined the payments, and updated the addresses in compiling the Payment List;
- (d) conduct an independent audit (which may be internal or external) of the accuracy and completeness of the Payment List; and
- (e) submit to the OCC the Payment List, the detailed description prepared pursuant to paragraph 2(c) of this Article, and the results of the independent audit conducted pursuant to paragraph 2(d) of this Article.

(3) The Bank shall pay interest on payments to be made under the Consent Order, in addition to any other interest required by this Consent Order, if any of the items in Paragraph (2)(e) of this Article is submitted to the OCC later than one hundred and twenty (120) days after the Order Date. The amount of interest shall be calculated at a rate of eight percent (8%) per annum, for a period of sixty (60) days.

(4) After receiving approval from the OCC, the Bank shall:

- (a) For all consumers who are not designated on the Payment List as a “Consumer With an Address Subject to Confirmation,” within thirty (30) days pay to each consumer the amount of restitution provided for that consumer in the Payment List (so long as the amount of restitution exceeds \$1) as follows, in descending order of priority:

- (i) if no amounts have been charged off, by a check sent to the consumer; otherwise
 - (ii) in accordance with paragraph (7) of this Article.
- (b) For any consumer designated as a “Consumer With an Address Subject to Confirmation,” and who did not have amounts charged off, or if there were amounts charged off, the Payment List shows that a restitution payment would remain after applying the offset calculation in paragraph (7) of this Article, within ten (10) days send to each such consumer, at the consumer’s last known address, an envelope containing a pre-addressed postage-paid return envelope and a letter in the form attached in Appendix B. The envelope shall contain no materials other than the letter and return envelope, and shall be mailed in an envelope approved by the Assistant Deputy Comptroller for Credit Card Banks. If the Bank receives, within thirty (30) days of mailing, a communication that provides an address for that consumer, the Bank, using that address, shall within fifteen (15) days pay to such consumer the amount of restitution provided for that consumer in the Payment List, and otherwise proceed, adjusting dates and timeframes accordingly, as if the consumer had not been identified as a “Consumer With an Address Subject to Confirmation.”
- (c) The Bank shall not use, sell, share, or otherwise disclose any information on a consumer that the Bank receives in response to the letter in Appendix B for any marketing or debt collection purpose.

(5) Consumers to be paid by check shall be sent, by United States Postal Service first-class mail, address correction service requested, a check payable to the consumer. The face of the checks shall clearly and conspicuously state “VOID IF NOT NEGOTIATED WITHIN 180 DAYS.” The checks shall be mailed in an envelope approved by the Assistant Deputy Comptroller for Credit Card Banks.

(6) Enclosed with each check shall be a letter provided by the Assistant Deputy Comptroller for Credit Card Banks, which shall be provided to the Bank within ten (10) days of the Order Date and shall be in a form substantially similar to Appendix A, attached hereto. The envelope containing a check shall contain no other materials than those specified by this Article.

(7) Offset

- (a) subject to paragraph (7)(b) of this Article, the Bank shall offset a restitution payment to a consumer required by this Order against amounts that have been charged off on the consumer’s account, and remain uncollected by the Bank, subject to the limitations of this paragraph. Such offset shall be limited to uncollected charge-offs for the principal amount of charges for purchases, cash advances, and balance transfers, incurred by the consumer, exclusive of finance, other Account-Related Charges and any fees for the purchase of, or enrollment in, Bank fee-based products that were charged-off by the Bank. . In making this calculation, the Bank shall assume that all payments made by consumers were applied first to charges other than charges for purchases, cash advances, and balance transfers, except that the total amount charged off for purchases, cash advances, and balance transfers pursuant to this calculation shall be

reduced by the aggregate of any amounts by which, within a billing cycle, a payment made by the consumer in that billing cycle exceeded fees and other Account Related Charges imposed during that billing cycle, with any such amount to be limited by the amount of charges for purchases, cash advances, and balance transfers imposed during that billing cycle. . To the extent that the restitution or reimbursement amount required to be paid by the Bank to the consumer pursuant to this Consent Order exceeds such principal amount by more than \$1, the Bank shall send such consumer a check pursuant to paragraph (5) of this Article. For any offset conducted pursuant to this paragraph, the Bank within thirty (30) days shall notify the consumer of such offset and shall make the appropriate report to the appropriate credit reporting agencies.

- (b) if the Bank has sold the charged off amount to a third party, the Bank shall not offset the restitution payment by this charged-off amount.

(8) For a period of one hundred twenty (120) days from the date the payment checks are mailed, the Bank shall make reasonable attempts to locate and mail their payment checks to any consumers whose payment checks were returned for any reason. If the Bank has information that the consumer is deceased, the Bank shall make reasonable efforts to pay the restitution to the consumer's estate or the consumer's heirs, as appropriate.

(9) One hundred eighty-seven (187) days after the last payment check is mailed, the Bank shall:

- (a) compile a list of all checks that the Bank has been unable to deliver to the consumer, the consumer's estate, or the consumer's heirs, or that have not been negotiated,
- (b) prepare a description of the Bank's attempt to locate consumers whose checks were returned, and the Bank's procedures with regard to consumers who were designated on the Payment List as "Consumer With an Address Subject to Confirmation";
- (c) conduct an independent audit of the Bank's efforts to locate consumers whose checks were returned; and
- (d) submit to the OCC the list and description compiled pursuant to paragraphs (9)(a) and 9(b) and the independent audit conducted pursuant to paragraph (9)(c).

(10) After receiving approval from the OCC, the Bank shall void all checks that were returned or have not been cashed. The Bank is not obligated by or as a result of this Order to make any payment to a consumer whose check has been voided pursuant to this paragraph.

ARTICLE VII

DEFINITIONS

(1) "Account Related Charges" means all charges to an account other than purchases, balance transfers, and cash advances initiated by the consumer. "Account Related Charges" includes all other charges, for example, finance charges, application fees, annual membership

fees, credit line increase fees, late fees, overlimit fees, and any charge for a savings deposit to secure the account.

(2) “Assistant Deputy Comptroller” and “Assistant Deputy Comptroller for Credit Card Banks” means the Assistant Deputy Comptroller for Credit Card Banks for the Western District, 50 Fremont Street, Suite 3900, San Francisco, CA 94105-2292.

(3) “Available credit” means the difference, in dollar terms, between the credit line disclosed to the consumer and the outstanding balance on the account. “Little or no available credit” means available credit of less than \$50.

(4) “Available credit at account opening” means the available credit on an account after all enrollment, application, annual, security savings deposit, and other charges related to the processing or opening of an account have been applied to the account.

(5) “Billing Cycle” has the same meaning as in Regulation Z, 12 C.F.R. Part 226.

(6) “Clear and conspicuous” shall mean that the disclosure is readable and reasonably understandable (or in the case of oral disclosures audible and reasonably understandable) and designed to call attention to the nature and significance of the information in the disclosure. For example, if a claim as to the cost or availability of a feature, benefit, or credit term is made in a written advertisement or solicitation, and there is any material limitation or condition to obtaining the feature, benefit, or credit term that is not disclosed in close proximity to the claim, this clear and conspicuous standard requires that:

- (a) the advertisement or solicitation shall contain a reference to the limitation, condition or cost disclosure in type of at least 10 point type size (other than on the outside of a direct mail envelope, where the text shall be in at least 8 point type size), which reference shall be either in close proximity

to the claim or, if indicated by an asterisk affixed to the claim, on the page where the claim is stated. Disclosures that are transmitted by electronic communication are judged for purposes of this paragraph in the form in which they are provided, even though they may be viewed by the consumer in a different form;

- (b) the reference shall call attention to the fact that the disclosure contains limitation, condition or cost information, by using the terms “limitation” or “condition” or “cost” or their substantial equivalents;
- (c) the reference shall direct the consumer to the location of the disclosure, which shall be in or with the advertisement or solicitation; and
- (d) the actual disclosure of limitation, condition or cost information shall itself be readable and reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure. For example, if the specific disclosure of limitation, condition, or cost information is located within a written document that contains numerous provisions, the specific disclosure shall be presented in a manner that, through heading, format, and/or type size, is designed to call attention to the nature and significance of the specific disclosure.

These requirements would apply to situations where, for example, a claim is made regarding the cost or availability of a feature, benefit, or credit term, but such claim is subject to material conditions or limitations. And where, as another example, a claim, explicitly or by implication, indicates that the consumer will receive the feature, benefit, or credit term, but there is a material limitation or condition on the consumer receiving the feature, benefit, or credit term.

(7) “Communication” shall include, unless the context indicates otherwise, communications in oral, written, or electronic form, including over the Internet.

(8) “Credit card account” and “credit card” and “account” shall mean a credit card account issued by the Bank.

(9) “Credit line” shall mean the credit limit on a credit card account disclosed to the consumer, and shall not include any tolerance applied by the Bank, whether or not such tolerance is disclosed to the consumer, before a fee may be imposed for exceeding the credit limit.

(10) “Days” shall mean calendar days unless otherwise specified.

(11) “Finance charge” shall have the same meaning as that term has in Regulation Z, 12 C.F.R. Part 226.

(12) “Misleading” and “deceptive” shall mean deceptive as that term is interpreted under the Federal Trade Commission Act.

(13) “Periodic statement” shall have the same meaning as that term has in Regulation Z, 12 C.F.R. Part 226.

(14) “Order Date” shall mean the date this Consent Order is signed by an authorized representative of the Comptroller.

(15) “Written” shall include communications over the Internet.

ARTICLE VIII

SCOPE OF SETTLEMENT

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or approval of the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Assistant Deputy Comptroller for Credit Card Banks for good cause upon written application by the Board.

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller, through his authorized representative.

IT IS SO ORDERED, this 3rd day of December, 2001.

/s/ John F. Curtis

12/03/01

John F. Curtis
Assistant Deputy Comptroller for Credit Card Banks
for the Western District

Date

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

IN THE MATTER OF:)
)
FIRST NATIONAL BANK OF MARIN)
LAS VEGAS, NEVADA)

**STIPULATION AND CONSENT TO THE ISSUANCE
OF A CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) is the primary federal regulator of First National Bank of Marin, N.A., Las Vegas, Nevada (“Bank”);

WHEREAS, pursuant to Federal law and regulation, including 12 U.S.C. § 484 and 12 C.F.R. § 7.4000, no national bank, including the Bank, shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress by either House thereof or by any committee of Congress or of either House duly authorized, except with respect to State enforcement of unclaimed property or escheat laws;

WHEREAS, the Comptroller, through his National Bank Examiner, has conducted an examination and other investigation of the Bank in order to determine whether the Bank has complied with certain laws, rules, and regulations, including the Federal Trade Commission Act;

WHEREAS, the Comptroller intends to charge the Bank with violations of the Federal Trade Commission Act;

WHEREAS, the Bank neither admits nor denies that it has violated the provisions of the Federal Trade Commission Act;

WHEREAS, the Bank, in the interest of cooperation, compromise, and settlement, consents to the issuance of a Consent Order, dated December 3, 2001 (“Order”); and

WHEREAS, the Comptroller has determined that the restitution required by the Order provides a suitable and equitable remedy for the individual consumers affected by the conduct which is the subject of the Order.

NOW THEREFORE, in consideration of the above premises, the Comptroller, by and through his authorized representative, and the Bank, by and through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

ARTICLE I

JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b).

ARTICLE II

STIPULATION AND CONSENT

(1) The Bank hereby consents and agrees to the issuance of the Order by the Comptroller. The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that the Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i).

(2) The Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b). The Order and the Stipulation and Consent expressly do not form, and may not be construed to form, a contract binding on the OCC or the United States.

Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities. The terms of the Order are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

(3) The agreement and consent of the Bank shall not be deemed or represent a determination on the merits of any violation of law or regulation.

ARTICLE III

WAIVERS

- (1) The Bank, by entering into this Stipulation and Consent, hereby waives:
- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
 - (b) any and all procedural rights available in connection with the issuance of the Order, including any requirement that findings be made as a condition of the Order under 12 U.S.C. § 1818, and nothing in this Stipulation and Consent or the Order shall constitute such a finding;

- (c) any and all rights to seek any type of administrative or judicial review of the Order; and
- (d) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

OTHER ACTIONS

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

ARTICLE V

MISCELLANEOUS PROVISIONS

(1) Nothing in this Stipulation and Consent shall be construed to be and is not intended to imply any admission or denial by the Bank as to any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with the Order constitute or be construed as an admission or denial by the Bank of any fact, finding, conclusion, issue of law, or violation of law. The Bank's agreement to institute a practice pursuant to this Stipulation and Consent does not constitute an admission or denial that the Bank's practice was otherwise prior to the date of the Order. Payments under the Order are made to compensate consumers and do not constitute, and shall not be construed as forfeitures, fines or penalties, or payments in lieu thereof.

(2) This Stipulation and Consent may be executed in one or more counterparts which, taken together, shall constitute one and the same document. In the event that any of the

/s/

Berkman Hong

12/2/01

Date

/s/

Robert A. DeJong

12/3/01

Date

Appendix A

Dear Consumer:

The enclosed check is a restitution payment from First National Bank of Marin (“FNB Marin”). Please cash this check as soon as possible. It will be void after 180 days from the date of the check.

The Office of the Comptroller of the Currency of the United States of America (“OCC”) supervises and regulates FNB Marin. We determined that certain consumers may have been harmed by the practices of FNB Marin in marketing its credit cards. FNB Marin has entered into a Consent Order as part of a settlement with the OCC . As a result of that settlement, FNB Marin agreed to make payments to certain consumers who may have been harmed by its practices. Under the terms of the Consent Order, you were identified as one of the consumers to whom FNB Marin is required to make a payment.

If you would like to review the Consent Order, you will find it at www.occ.treas.gov. If you have any questions about this payment, please call FNB Marin at [number].

Sincerely,

Comptroller of the Currency

