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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MELVYN KLEIN, Derivatively on Behalf of Nominal Defendant OPUS BANK, Plaintiff, v. STEPHEN H. GORDON, MARK CICIRELLI, MARK E. SCHAFFER, MICHAEL MEYER, ROBERT SHACKLETON, THOMAS M. BOWERS, CURTIS A. GLOVIER, and DAVID KING, Defendants, OPUS BANK, a California Corporation, Nominal Defendant.	)	CASE NO.: **VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT** **<u>JURY TRIAL DEMANDED</u>**

Plaintiff, derivatively on behalf of Opus Bank ("Opus" or the "the Company"), alleges the following based upon personal knowledge as to himself and his own acts, and upon information and belief based on the investigation of counsel as to all other matters. That investigation included, among other things, a thorough review and analysis of public documents, Federal Deposit Insurance Corporation ("FDIC") filings, court filings, press releases and news articles concerning Opus, and the other facts as set forth herein:

NATURE OF THE ACTION

1. This is a shareholder derivative action brought on behalf of and for the benefit of Opus, against certain of its officers and/or directors named as defendants herein seeking to remedy their breaches of fiduciary duties. Defendants' actions have caused, and will continue to cause, substantial financial harm and reputational damage to Opus.

2. Opus is a California-chartered commercial bank.

3. On October 17, 2016, Defendants caused the Company to issue a press release entitled *Opus Bank Announces Loan Charge-Offs Will Impact Third Quarter Earnings*. In this press release the Company reported that earnings for the third quarter 2016 would include a $0.59 per diluted share impact from loan charge-offs which the Company expected to result in a net loss of approximately $0.05 per diluted share for the third quarter of 2016.

4. On this news, Opus's stock price fell $7.25 per share, or 21%, to close at $27.20 per share on October 17, 2016. Throughout the Relevant Period (July 28, 2014 through the present), Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) certain of the Company's loans were of poor quality; (2) the Company was over-representing the quality of the loans to the public; (3) as such, the Company failed to properly account for the loans in

violation of Generally Accepted Accounting Principles ("GAAP"); (4) as a result, the Company would be forced to recognize large charge-offs associated with the loans; (5) the Company lacked adequate internal controls over accounting and financial reporting; and (6) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were false and misleading and/or lacked a reasonable basis.

JURISDICTION AND VENUE

5. This Court also has jurisdiction over the claims asserted herein under 28 U.S.C. §1331 because one of the claims arise under and pursuant to §14(a) of the Exchange Act (15 U.S.C. §78n(a)) and Rule 14a-9 promulgated there under (17 C.F.R. §240.14a-9).

6. The Court has jurisdiction over each defendant because each defendant is either a corporation that does sufficient business in California, or is an individual who has sufficient minimum contacts with California so as to render the exercise of jurisdiction by the California courts permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because one or more of the defendants either resides in or maintains executive offices in this District, including Nominal Defendant Opus, a substantial portion of the transactions and wrongs complained of herein – including the Individual Defendants' primary participation in the wrongful acts detailed herein and aiding and abetting in violations of fiduciary duties owed to Opus – occurred in this District, and the Individual Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

8. In connection with the acts and conduct alleged herein, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate

telephone communications, and the facilities of the national securities exchanges and markets.

PARTIES

Plaintiff

9. ***Plaintiff Melvyn Klein*** is a citizen of the state of New York and a current Opus shareholder during the Relevant Period. Plaintiff will continue to hold Opus shares throughout the pendency of this action. Plaintiff will fairly and adequately represent the interests of the shareholders in enforcing the rights of the corporation.

Nominal Defendant

10. ***Nominal Defendant Opus Bank*** is a California corporation with its principal executive offices located at 19900 MacArthur Blvd., 12th Floor, Irvine, California. During the Class Period, the Company's common stock traded on the NASDAQ Stock Market (the "NASDAQ") under the symbol "OPB."

Director Defendants

11. ***Defendant Stephen H. Gordon*** ("Gordon") was, at all relevant times, the Chairman of the Board, Chief Executive Officer ("CEO"), and President of Opus. Defendant Gordon is a citizen of California.

12. ***Defendant Curtis A. Glovier*** ("Glovier") has served as a member of the Board since September 2010. Glovier is Chairman and Chief Executive Officer of PensCo Trust Company, a wholly-owned subsidiary of Opus; Senior Executive Vice President, Head of Wealth Services of Opus; and Senior Managing Director of the Merchant Banking division. Defendant Allison is a citizen of New Jersey.

13. ***Defendant Mark Cicirelli*** ("Cicirelli") has served as a member of the Board since March 2012. Defendant Cicirelli is a member of the Audit and Compensation committees. Defendant Cicirelli is a citizen of New York.

14. ***Defendant David King*** ("King") has served as a member of Board since October 2016. Defendant King is a citizen of California.

15. ***Defendant Mark E. Schaffer*** ("Schaffer") has served as a member of the Board since September 2010. Defendant Schaffer is a member of the Audit, Compensation and Executive Committee. He is also the Chairperson of the Directors' Loan Committee and the Nominating and Governance Committee. Defendant Schaffer is a citizen of California.

16. ***Defendant Michael L. Meyer*** ("Meyer") has served as a member of Board since September 2010. Defendant Meyer is also a member of the Audit, Compensation, Directors' Loan, Executive, and Nominating and Governance committees. Defendant Meyer is a citizen of California

17. ***Defendant Robert J. Shackleton*** ("Shackleton") has served as a member of the Board since September 2010. Defendant Schackleton is also a member of the Directors' Loan Executive and Nominating and Governance committees. He is also the Chairperson of the Audit and Compensation committees. Defendant Shackleton is a citizen of California.

18. ***Defendant Thomas M. Bowers*** ("Bowers") is a director of the Company. Defendant Bowers is a member of the Compensation Committee and Nominating and Governance Committee. Defendant Bowers is a citizen of Connecticut.

SUBSTANTIVE ALLEGATIONS

MATERIALLY FALSE AND MISLEADING STATEMENTS DURING THE RELEVANT PERIOD

19. On October 26, 2015, Defendants caused the Company to issue a press release entitled *Opus Bank Announces Third Quarter 2015 Results*. It was in this press release that the Company reported in relevant part:

IRVINE, Calif. -- (BUSINESS WIRE) -- Opus Bank ("Opus") (NASDAQ: OPB) announced today net income of $14.7 million, or $0.44 per diluted share, for the third quarter of 2015 compared to $17.5 million, or $0.52 per diluted share, for the second quarter of 2015 and $7.7 million, or $0.23 per diluted share, for the third quarter of 2014.

The reduction in net income as compared to the second quarter of 2015 was mainly due to $6.7 million lower accretion income from the sale of acquired loans and $1.8 million higher provision expense for specific loan relationships and risk rating changes. Net income increased by 39% to $43.3 million for the nine months ended September 30, 2015 from $31.2 million for the nine months ended September 30, 2014. Pretax pre-provision earnings decreased 8% to $31.8 million for the third quarter of 2015 from $34.5 million in the prior quarter, while increasing 64% to $88.0 million for the nine months ended September 30, 2015 from $53.6 million for the nine months ended September 30, 2014. Additionally, Opus announced that its Board of Directors approved increasing its quarterly cash dividend by 20% to $0.12 per share payable on November 19, 2015 to common and preferred shareholders of record as of November 5, 2015.

Quarter and Year to Date 2015 Highlights

- Total assets increased by 6% to a record $6.2 billion at September 30, 2015 from $5.8 billion at June 30, 2015 and by 31% from $4.7 billion at September 30, 2014, driven by continued strong loan and deposit growth.

- New loan fundings were a record $638.3 million in the third quarter of 2015, an increase of 17% from $543.8 million in the second quarter of 2015 and an increase of 40% from $455.4 million in the third quarter of 2014. The weighted average rate on new loan fundings during the third quarter of 2015 was 4.41%, up 7 basis points compared to 4.34% during the second quarter of 2015 and up 23 bps compared to 4.18% during the third quarter of 2014. Commercial and Specialty Banking divisions represented 48% of new loan fundings during the third quarter of 2015, continuing the strategic shift in the mix of loans that has resulted in 8 basis points expansion in the yield on our originated loan portfolio for the first nine months of 2015 compared to the same period in 2014. Loan commitments originated during the third quarter of 2015 were a record $807.0 million, an increase of 35% from $598.9 million in the second quarter of 2015 and 58% from $511.7 million during the third quarter of 2014.

- Total loans held-for-investment, which includes our acquired loan portfolio, increased by $372.4 million, or 8%, during the third quarter to a record $5.0 billion and increased by $1.3 billion, or 34%, from September 30, 2014. Our originated loan portfolio grew by $414.4 million to $4.7 billion at September 30, 2015, an increase of 10% from June 30, 2015 and 45% from September 30, 2014.

- The loan origination pipeline remains robust entering the fourth quarter and continues to reflect the growth and maturation of our Commercial and Specialty Banking divisions, which increased to 59% of the pipeline on October 1, 2015 from 58% at July 1, 2015.

- Our asset quality remains strong, with nonperforming assets totaling $16.8 million, or 0.27%, of total assets at September 30, 2015 compared to $12.6 million, or 0.22%, at June 30, 2015 and $12.7 million, or 0.27%, at September 30, 2014. Provision expense for the third quarter of 2015 was $7.6 million compared to $5.8 million for the second quarter of 2015. The current quarter provision was driven by loan growth and changes in specific reserves and individual risk ratings. Our ratio of allowance for loan losses to total loans increased to 0.74% as of September 30, 2015 and our coverage ratio was 1.16%, which includes the $21.6 million remaining discount on the acquired loan portfolio.

- Total deposits grew $356.4 million, or 8%, during the third quarter to a record $4.9 billion at September 30, 2015 and increased by $1.4 billion, or 41%, from September 30, 2014. Noninterest bearing plus interest bearing demand deposits ("total demand deposits") increased by $196.7 million, or 12%, during the third quarter to $1.8 billion and comprised 37% of total deposits as of September 30, 2015, up from 35% at June 30, 2015. As of September 30, 2015, deposit balances associated with our Escrow and Exchange divisions totaled $554.7 million, an increase of $33.7 million from June 30, 2015. Deposits related to our Commercial and Specialty Banking divisions, including Escrow and Exchange, increased by $278.3 million during the third quarter of 2015, up 17% from June 30, 2015. Business deposits increased 14% during the third quarter and represented 50% of our total deposits at September 30, 2015, compared to 47% at June 30, 2015 and 38% at September 30, 2014. Our cost of deposits decreased one basis point from the second quarter of 2015 to 0.48% for the third quarter of 2015.

- Total net interest income decreased 6% to $51.4 million for the third quarter of 2015 compared to $55.0 million for the second quarter of 2015 due to lower accretion income from the acquired loan portfolio in the third quarter of 2015 compared to the second quarter, and increased 34% from $38.3 million for the third quarter of 2014. Interest income from our originated loan portfolio totaled $48.5 million, an increase of $5.3 million, or 12%, from the second quarter of 2015 and $16.3 million, or 51%, from the third quarter of 2014. Interest income from the acquired loan portfolio decreased to $8.3 million for the third quarter of 2015 from $16.9 million in the second quarter of 2015 and from $10.8 million for the third quarter of 2014. During the third quarter of 2015, we continued to opportunistically manage the acquired loan portfolio and recognized $3.0 million of accretion income from loans that closed through prepayment, foreclosure and sale compared to $10.1 million during the second quarter of 2015. Net interest income increased 31% to $151.6 million for the nine months ended September 30, 2015 from $115.5 million for the nine months ended September 30, 2014.

- Net interest margin decreased 49 basis points to 3.80% for the third quarter of 2015 from 4.29% in the second quarter of 2015 and increased one basis point from 3.79% in the third quarter of 2014. The decrease from the prior quarter was due to lower accretion income from the acquired loan portfolio. Contractual net interest margin, which excludes the impact of accretion and amortization of acquisition discounts and premiums, increased 11 basis points to 3.49% in the third quarter of 2015 from 3.38% in the second quarter of 2015 primarily due to an increase in the yield on originated loans and prepayment fees, offset by day count and decline in the acquired loan portfolio. Net interest margin decreased 21 basis points to 3.98% for the nine months ended September 30, 2015 from 4.19% for the nine months ended September 30, 2014 due to lower contribution from the acquired loan portfolio. Contractual net interest margin increased 2 basis points to 3.44% for the nine months ended September 30, 2015 from 3.42% for the nine months ended September 30, 2014 primarily due to improved shift in mix and higher balances of, and yield on, originated loans and prepayments, offset by lower contribution from the acquired loan portfolio.

- Noninterest income during the third quarter of 2015 totaled $7.3 million compared to $8.1 million in the second quarter of 2015 and $3.9 million in the third quarter of 2014. Noninterest income during the third quarter included $1.6 million in fees generated through our Escrow and Exchange divisions, $571,000 of advisory fee income from our Merchant Banking division, which includes our broker-dealer subsidiary Opus Financial Partners, and $1.1 million in net equity warrant valuation changes. The decrease in total noninterest income from the prior quarter was due to a $779,000 reduction in fee income from our Real Estate Capital Markets group and a $760,000 decrease in dividends received from the Federal Home Loan Bank of San Francisco ("FHLB") due to a special dividend received in the prior quarter. Noninterest income increased 89% to $18.7 million for the nine months ended September 30, 2015 from $9.9 million for the nine months ended September 30, 2014.

- Our efficiency ratio was 45.8% for the third quarter of 2015 compared to 45.3% for the second quarter of 2015 and 59.5% for the third quarter of 2014. For the nine months ended September 30, 2015 our efficiency ratio was 48.3% compared to 57.3% for the nine months ended September 30, 2014. Noninterest expense to average assets decreased to 1.8% in the third quarter of 2015 compared to 2.0% during the second quarter of 2015 and 2.2% during the third quarter of 2014. Noninterest expense to average assets decreased to 2.0% for the nine months ended September 30, 2015 from 2.3% for the nine months ended September 30, 2014.

- Return on average tangible equity was 10.1% for the third quarter of 2015 compared to 12.5% for the second quarter of 2015 and 5.7% for the third quarter of 2014. Return on average tangible equity was 10.3% for the nine months ended September

30, 2015 compared to 8.6% for the nine months ended September 30, 2014. Return on average assets was 0.98% for the third quarter of 2015 compared to 1.23% for the second quarter of 2015 and 0.67% for the third quarter of 2014. Return on average assets was 1.03% for the nine months ended September 30, 2015 as compared to 0.99% for the nine months ended September 30, 2014.

- Our loan-to-deposit ratio was unchanged from the prior quarter at 101% as of September 30, 2015.

- Our balance sheet is well positioned for rising interest rates as it continues to remain asset sensitive as of September 30, 2015. The mix, duration, repricing characteristics, amortization schedules and increased cash flows related to our loan and deposit portfolios result in positive outcomes under all our interest rate modeling scenarios.

- Our tangible book value per as-converted share at September 30, 2015 increased to $17.89 from $17.48 at June 30, 2015 and $16.80 at September 30, 2014.

Stephen H. Gordon, Founding Chairman, Chief Executive Officer and President of Opus Bank, stated, "Our third quarter was highlighted by record new loan fundings, driven by the continued shift in loan mix toward our Commercial and Specialty Banking activities. This continued growth in our commercial client base contributed to an additional 11 basis point expansion to our contractual net interest margin as originated loan yields increased and our cost of deposits decreased further, with commercial business deposits growing to now represent 50% of our total deposits." Gordon added, "As we continue to execute on our plan to leverage our infrastructure, distribution and client base, we continue to display meaningful scalability through our efficiency and performance metrics, with our efficiency ratio now in the mid-40s and our nonperforming asset ratio at 0.27%, both well below our West Coast regional and high-growth national peers." Gordon concluded, "Given where Opus was positioned at quarter-end and line of sight into our anticipated growth during the remainder of 2015 and into 2016, we are pleased to announce today that the Board of Directors has approved increasing our quarterly cash dividend by 20% to $0.12 per share, which reflects our strong capital position, asset quality, liquidity, increasing earnings power and return metrics, and confidence in our ability to execute our business strategy and growth plans."

* * *

Asset Quality

We continue to experience strong asset quality as our loan portfolio seasons, evidenced by the low balance of nonperforming assets and stable ratio of nonperforming assets to total assets of 0.27% as of September 30, 2015 compared to 0.22% at June 30, 2015 and 0.27% at September 30, 2014. We recorded a total provision for loan losses of $7.6 million in the third quarter of 2015 compared to $5.8 million in the second quarter of 2015 and $4.5 million in the third quarter of 2014. The provision recapture on the acquired loan portfolio totaled $709,000 in the third quarter of 2015, $387,000 during the second quarter of 2015 and $509,000 in the third quarter of 2014 due to continued improvement in expected cash flows and credit performance. A provision for loan losses of $8.3 million was recorded on the originated loan portfolio during the third quarter of 2015 compared to $6.2 million in the second quarter of 2015 and $5.1 in the third quarter of 2014. The provision for loan losses during the current quarter on the originated loan portfolio was comprised of $2.3 million for portfolio growth and $6.0 million for changes in specific reserves, individual risk ratings and loss factors.

Our allowance for loan losses represented 0.74% of our total loan portfolio at September 30, 2015 as compared to 0.66% at June 30, 2015 and 0.58% at September 30, 2014.

> Our acquired loan portfolio has a remaining discount of $21.6 million at September 30, 2015. The coverage ratio for the total loan portfolio, which includes the remaining discount on the acquired loan portfolio, at September 30, 2015 was 1.16% compared to 1.22% at June 30, 2015 and 1.82% at September 30, 2014, declining as the originated loan portfolio continues to increase as a percentage of the total loan portfolio. Our allowance for loan losses on originated loans resulted in a coverage ratio of 0.76% at September 30, 2015, an increase from 0.67% at June 30, 2015 and 0.58% at September 30, 2014.

20. On November 6, 2015, Defendants caused the Company to file its Quarterly Report with the FDIC on Form 10-Q for the fiscal quarter ended September 30, 2015. The Company's Form 10-Q was signed by Defendant Gordon, and reaffirmed the Company's financial results announced in the press release issued on October 26, 2015. The Form 10-Q contained certifications pursuant to SOX, one which was signed by Defendant Gordon.

21. On January 25, 2016, Defendants caused the Company to issue a press release entitled *Opus Bank Announces Fourth Quarter and Year End 2015 Results*. It was in this press release that the Company reported in relevant part:

> IRVINE, Calif. -- (BUSINESS WIRE) -- Opus Bank ("Opus") (NASDAQ: OPB) announced today net income of $16.7 million, or $0.50 per diluted share, for the fourth quarter of 2015 and $59.9 million, or $1.79 per diluted share, for the year ended December 31, 2015 as compared to $14.7 million, or $0.44 per diluted share, for the third quarter of 2015 and $43.7 million, or $1.38 per diluted share, for the year ended December 31, 2014. Net income in the fourth quarter included approximately $1.2 million of acquisition and other strategic initiative related non-core expenses, including costs associated with the successful execution of the secondary stock offering by selling shareholders completed on November 23, 2015, and $3.7 million of provision for loan loss related to our record loan fundings and growth during the quarter. Additionally, Opus announced today that its Board of Directors

approved increasing its quarterly cash dividend by 25% to $0.15 per common share payable on February 18, 2016 to common and preferred shareholders of record as of February 4, 2016.

Quarter and Year End 2015 Highlights

- New loan fundings were a record $763.1 million in the fourth quarter of 2015, an increase of 20% from $638.3 million in the third quarter of 2015 and an increase of 33% from $572.7 million in the fourth quarter of 2014. For the full year 2015, new loan fundings totaled a record $2.4 billion as compared to $1.8 billion during 2014 and exceeded our forecasted new loan fundings by approximately $200 million, or over 9%. Record loan commitments of $819.9 million were originated during the fourth quarter of 2015 compared to $807.0 million in the third quarter of 2015 and $613.1 million in the fourth quarter of 2014. Loan commitments originated during 2015 totaled $2.8 billion compared to $2.1 billion in 2014, representing additional opportunities for future new loan fundings.

- Commercial and Specialty Banking divisions represented 54% of new loan fundings during the fourth quarter and 52% for the full year 2015, and represented 58% of total new loan commitments during the fourth quarter of 2015 and full year 2015, continuing the strategic shift in the mix of loans that contributed to 6 basis points expansion in the yield on our originated loan portfolio in 2015 compared to the prior year.

- Our originated loan portfolio increased by a record $548.4 million, or 12%, during the fourth quarter of 2015 and $1.6 billion, or 44%, during the full year 2015. At December 31, 2015, our originated loan portfolio totaled $5.2 billion and comprised 95% of our total loan portfolio. Quarterly organic growth in total loans held-for-investment, which includes our acquired loan portfolio, was the highest in Opus' history at $494.2 million, or 10%, during the fourth quarter of 2015. Total loans held-for-investment increased by $1.4 billion, or 35%, from December 31, 2014 to a record $5.5 billion as of December 31, 2015.

- Total assets increased to a record $6.6 billion at December 31, 2015 from $6.2 billion at September 30, 2015 and $5.1 billion at December 31, 2014 due to continued strong loan and deposit growth.

- The loan origination pipeline remains robust entering the first quarter of 2016 and continues to reflect the growth and maturation of our Commercial and Specialty Banking divisions, which comprised 57% of the pipeline of total loan commitments on January 1, 2016, compared to 59% on October 1, 2015.

- Total deposits grew $359.3 million, or 7%, during the fourth quarter to a record $5.3 billion at December 31, 2015, and increased by $1.5 billion, or 40%, from December 31, 2014. Noninterest bearing plus interest bearing demand deposits ("total demand deposits") increased by $323.0 million, or 18%, during the fourth quarter of 2015 to $2.1 billion, and increased by $1.3 billion, or 150%, during the year ended December 31, 2015. Total demand deposits comprised 40% of total deposits as of December 31, 2015, up from 37% as of September 30, 2015 and 22% as of December 31, 2014. As of December 31, 2015, deposit balances associated with our Escrow and Exchange divisions totaled $689.9 million, an increase of $135.1 million from September 30, 2015. Deposits related to our Commercial and Specialty Banking divisions, including Escrow and Exchange, increased by $301.4 million during the fourth quarter and represented 41% of our total deposits at December

31, 2015, compared to 38% at September 30, 2015 and 19% at December 31, 2014. Business deposits increased during the fourth quarter and represented 52% of our total deposits at December 31, 2015, compared to 50% at September 30, 2015 and 37% at December 31, 2014.

- Total revenues increased 6.8% to $62.7 million for the fourth quarter of 2015 compared to $58.7 million for the third quarter of 2015 and increased 38% compared to $45.4 million for the fourth quarter of 2014. Total revenues increased 36% to $233.0 million for the year ended December 31, 2015 compared to $170.8 million for the year ended December 31, 2014.

- Total net interest income increased 10% to $56.7 million for the fourth quarter of 2015 compared to $51.4 million for the third quarter of 2015. Net interest income increased 34% to $208.3 million for the year ended December 31, 2015 from $157.7 million for the year ended December 31, 2014, mainly due to a 51% increase in interest income from originated loans during 2015. During the fourth quarter of 2015 we continued to opportunistically manage the acquired loan portfolio and recognized $5.5 million of accretion income from loans that closed through prepayment, foreclosure and sale, compared to $3.0 million during the third quarter of 2015. Interest income from our originated loan portfolio comprised 80% of loan interest income for the year ended December 31, 2015 as compared to 68% for the year ended December 31, 2014.

- Net interest margin increased 6 basis points to 3.86% for the fourth quarter of 2015 from 3.80% for the third quarter of 2015 and increased one basis point from 3.85% for the fourth quarter of 2014. The increase from the prior quarter was mainly due to higher accretion income from the acquired loan portfolio and a lower cost of deposits, partially offset by lower benefit from prepayments in the originated loan portfolio. The cost of deposits decreased one basis point to 0.47% during the fourth quarter of 2015 and decreased 10 basis points compared to the fourth quarter of 2014. For the year ended December 31, 2015, the cost of deposits decreased 6 basis points to 0.49% compared to 0.55% for the year ended December 31, 2014. Contractual net interest margin, which excludes the impact of accretion and amortization of acquisition discounts and premiums, was 3.42% for the fourth quarter of 2015 compared to 3.49% for the third quarter of 2015 and 3.37% for the fourth quarter of 2014. The decrease in the contractual net interest margin from the prior quarter was mainly due to the lower average balance of acquired loans and lower benefit from prepayments in the originated loan portfolio, offset by a lower cost of deposits. Contractual net interest margin increased 4 basis points to 3.44% for the year ended December 31, 2015 from 3.40% for the year ended December 31, 2014.

- Noninterest income during the fourth quarter of 2015 totaled $6.0 million compared to $7.3 million in the third quarter of 2015 and $3.2 million in the fourth quarter of 2014. Noninterest income during the fourth quarter included $1.8 million in fees generated through our Escrow and Exchange divisions, $561,000 of advisory fee income from our Merchant Banking division, which includes our broker-dealer subsidiary Opus Financial Partners, and a $399,000 gain recognized on the sale of originated loans, offset by a net write down of $515,000 on equity warrant valuation changes. Noninterest income increased 88% to $24.7 million for the year ended December 31, 2015 from $13.1 million for the year ended December 31, 2014.

- Noninterest expense during the fourth quarter of

2015 totaled $28.0 million compared to $26.9 million in the third quarter of 2015 and $25.9 million in the fourth quarter of 2014. The increase from the prior quarter was primarily due to approximately $1.2 million of acquisition and other strategic initiative related non-core expenses, including costs associated with the secondary stock offering by selling shareholders completed on November 23, 2015.

- Our efficiency ratio improved to 44.7% in the fourth quarter of 2015 compared to 45.8% for the third quarter of 2015 and 57.1% for the fourth quarter of 2014. For the year ended December 31, 2015, our efficiency ratio improved to 47.3% compared to 57.2% for the year ended December 31, 2014. Noninterest expense to average assets improved to 1.7% in the fourth quarter of 2015 from 1.8% in the third quarter of 2015 and improved from 2.1% in the fourth quarter of 2014. The ratio of noninterest expense to average assets decreased to 1.9% for the year ended December 31, 2015 from 2.2% for the year ended December 31, 2014.

- Return on average tangible equity increased to 11.2% for the fourth quarter of 2015 compared to 10.1% for the third quarter of 2015, and tax adjusted return on average tangible equity of 8.1% for the fourth quarter of 2014. Return on average tangible equity increased to 10.5% for the year ended December 31, 2015 compared to tax adjusted return on average tangible equity of 8.7% for the year ended December 31, 2014. Return on average assets increased to 1.03% for the fourth quarter of 2015 compared to 0.98% for the third quarter of 2015 and tax adjusted return on average assets of 0.90% for the fourth quarter of 2014. Return on average assets increased to 1.03% for the year ended December 31, 2015 compared to tax adjusted return on average assets of 0.97% for the year ended December 31, 2014.

- Asset quality continued to remain strong, with nonperforming assets totaling $24.3 million, or 0.37% of total assets, at December 31, 2015 compared to $16.8 million, or 0.27% of total assets, at September 30, 2015 and $10.5 million, or 0.21% of total assets, at December 31, 2014. The increase in nonperforming assets during the fourth quarter of 2015 was driven by a single loan relationship for which Opus has confirmed it has sufficient collateral to cover expected future inherent loss. Provision expense for the fourth quarter of 2015 was $8.0 million compared to $7.6 million for the third quarter of 2015 and $1.5 million for the fourth quarter of 2014. The fourth quarter provision was driven primarily by record new loan fundings and loan growth, which contributed $3.7 million of provision expense versus $2.3 million in the prior quarter, the continued shift in the mix of the loan portfolio toward commercial business loans that require higher levels of allowance, and changes in specific reserves, risk ratings and loss rates. Our ratio of allowance for loan losses to total loans increased to 0.80% as of December 31, 2015 and our coverage ratio was 1.08%, which includes the $15.4 million remaining discount on the acquired loan portfolio.

- Our balance sheet is well positioned for rising interest rates as it continues to remain asset sensitive as of December 31, 2015. We began to realize the initial benefits to interest income on our Prime rate and LIBOR indexed loans and to our cash investments as a result of the Federal Reserve's rate increase on December 16, 2015. The mix, duration, repricing characteristics, amortization schedules and cash flows generated from our loan and deposit portfolios result in positive outcomes under all our interest rate modeling scenarios.

- During the fourth quarter, Opus successfully completed an underwritten secondary offering of 5,479,452 shares of common stock by existing shareholders. Another 708,084 shares were offered upon execution of the underwriters' option to purchase additional shares. Opus did not receive any proceeds from the offering and the transaction had no material impact on our weighted average diluted shares outstanding. Capital ratios continue to be strong and well in excess of bank regulatory requirements.

- Our tangible book value per as converted common share at December 31, 2015 increased to $18.28 from $17.89 at September 30, 2015 and $17.26 at December 31, 2014.

Stephen H. Gordon, Founding Chairman, Chief Executive Officer and President of Opus Bank, stated, "The full year 2015 was highlighted by strong growth and improving profitability. We achieved record new loan fundings of $763 million in the fourth quarter and $2.4 billion during the year, accelerating beyond our forecasted expectations. We're pleased this strong year-end loan growth puts us at a higher starting point as we enter 2016. We additionally experienced equally strong growth in deposits, which continue to improve in quality, mix, and cost. As a result, Opus achieved 37% growth in net income during 2015, further enhancing franchise value. As we continue our leading growth into 2016, the maturation of our Commercial and Specialty Banking divisions is resulting in a more diversified mix of loans, which represented 52% of new loan fundings during 2015." Gordon added, "We continually strive to become more efficient, reaching a mid-40's efficiency ratio earlier than originally forecasted, driven by our keen focus on growing revenues while managing expenses." Gordon concluded, "Given where Opus was positioned at year-end and our anticipated growth in 2016, we are pleased to announce today that the Board of Directors has approved increasing our quarterly cash dividend by 25% to $0.15 per share, which reflects our strong capital position, asset quality, liquidity,

> increasing earnings power and return metrics, and confidence in our ability to execute our business strategy and growth plans."
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> Asset Quality
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> We continue to experience strong asset quality as our loan portfolio seasons, evidenced by the low balance of nonperforming assets and low ratio of nonperforming assets to total assets of 0.37% as of December 31, 2015 compared to 0.27% as of September 30, 2015 and 0.21% as of December 31, 2014. The increase in nonperforming assets during the fourth quarter of 2015 was driven by a single loan relationship for which Opus has confirmed it has sufficient collateral to cover expected future inherent loss. We recorded a total provision for loan losses of $8.0 million in the fourth quarter of 2015 compared to $7.6 million in the third quarter of 2015 and $1.5 million in the fourth quarter of 2014. A provision for loan losses of $8.4 million was recorded on the originated loan portfolio during the fourth quarter of 2015 compared to $8.3 million in the third quarter of 2015 and $1.6 million in the fourth quarter of 2014. The provision for loan losses during the fourth quarter of 2015 on the originated portfolio was comprised of $3.7 million for portfolio growth and $4.7 million for changes in specific reserves, individual risk ratings and loss factors, compared to $2.3 million for portfolio growth and $6.0 million for changes in specific reserves, individual risk ratings and loss factors in the third quarter of 2015, and $2.1 million for portfolio growth and a recapture of $557,000 for changes in specific reserves, individual risk ratings and loss factors in the fourth quarter of 2014. The provision for changes in specific reserves and risk ratings during the fourth quarter of 2015 was predominantly additional amounts on existing problem assets for activity in the fourth quarter of 2015 and not related to newly identified problem assets during the quarter. We had net charge-offs of $676,000 for the fourth quarter of 2015, or 0.05% of average loans annualized,

> compared to $1.4 million in the third quarter of 2015, or 0.12% of average loans annualized, and zero in the fourth quarter of 2014. The provision recapture on the acquired loan portfolio totaled $359,000 in the fourth quarter of 2015, $709,000 in the third quarter of 2015 and $111,000 in the fourth quarter of 2014.
>
> Our allowance for loan losses represented 0.80% of our total loan portfolio at December 31, 2015 compared to 0.74% at September 30, 2015 and 0.56% at December 31, 2014. We have continued to see the allowance as a percentage of total loans increase due to our strategic shift in the mix of our loan portfolio toward more commercial business loans, which require a higher allowance relative to our multifamily loans. At December 31, 2015, the total loan portfolio was comprised of 47% originated multifamily loans with the remaining portion comprised primarily of commercial business loans. Our acquired loan portfolio had a remaining discount of $15.4 million as of December 31, 2015. The coverage ratio for the total loan portfolio, which includes the remaining discount on the acquired loan portfolio, at December 31, 2015 was 1.08% compared to 1.16% at September 30, 2015 and 1.61% at December 31, 2014, declining as the acquired loan portfolio continues to decrease as a percentage of the total loan portfolio. Our allowance for loan losses on originated loans resulted in a coverage ratio of 0.82% as of December 31, 2015, compared to 0.76% as of September 30, 2015 and 0.56% as of December 31, 2014.

22. On February 29, 2016, Defendants caused the Company to file its Annual Report with the FDIC on Form 10-K for the fiscal year ended December 31, 2015. The Company's Form 10- K was signed by Defendant Gordon, and reaffirmed the Company's financial results announced in the press release issued on January 25, 2016. The Form 10-K contained certifications pursuant to SOX, one which was signed by Defendant Gordon.

23. On April 25, 2016, Defendants caused the Company to issue a press release entitled *Opus Bank Announces First Quarter 2016 Results*. It was in this press release that the Company reported in relevant part:

> IRVINE, Calif. -- (BUSINESS WIRE) -- Opus Bank ("Opus") (NASDAQ: OPB) announced today net income of $17.3 million, or $0.51 per diluted share, for the first quarter of 2016 compared to $16.7 million, or $0.50 per diluted share, for the fourth quarter of 2015 and $11.1 million, or $0.34 per diluted share, for the first quarter of 2015. Net income in the first quarter included $1.2 million of merger and strategic initiative related expenses, including costs associated with the acquisition of PENSCO Services, LLC and its wholly-owned subsidiary PENSCO Trust Company ("PENSCO"), which closed on April 13, 2016, as well as severance associated with our expense reduction and efficiency improvement strategy announced on January 11, 2016, and $3.4 million of seasonal compensation and benefits expenses. Additionally, Opus announced that its Board of Directors approved increasing its quarterly cash dividend by 20% to $0.18 per share payable on May 19, 2016 to common and preferred shareholder of record as of May 5, 2016.
>
> <u>Recent Developments</u>
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> - On April 13, 2016, Opus completed the acquisition of PENSCO, a leading tech-enabled alternative asset IRA custodian, with approximately $10.7 billion of custodial assets and over 45,000 clients with investments in over 40,000 unique asset types comprised of private equity, real estate, notes, cash and other non-exchange traded assets. Pursuant to the terms of the agreement, Opus paid consideration comprised of 1,664,615 shares of Opus Bank common stock and approximately $46.4 million in cash. PENSCO operates as a wholly owned subsidiary of Opus Bank and represents Opus' entry into wealth services.
>
> - As a result of PENSCO's primary purpose as an

alternative asset IRA custodian, as of April 22, 2016, $739 million of PENSCO's $1.15 billion of ancillary custodial client cash balances had already transitioned to Opus, bringing total demand deposits, which are comprised of noninterest and interest bearing demand accounts, to 46% of total deposits compared to 40% at March 31, 2016, meaningfully decreasing Opus' overall cost of deposits. As of April 22, 2016, PENSCO ancillary custodial client cash balances at Opus totaled $802 million.

- Our loan to deposit ratio decreased to 98% as of April 22, 2016 from 110% as of March 31, 2016 as a result of the transition of PENSCO ancillary custodial client cash balances and additional deposit inflows associated with our Fiduciary Banking and Correspondent Banking divisions.

- As of April 22, 2016, Opus paid off $220 million of the $750 million of FHLB advances outstanding at March 31, 2016 and plans to pay off an additional $465 million of maturing FHLB advances by the end of the second quarter of 2016 as Opus had readied its balance sheet to absorb the purchase of PENSCO. The execution of this strategy will further reduce Opus' cost of funds.

First Quarter 2016 Highlights

- Contractual net interest margin, which excludes the impact of accretion income from the acquired loan portfolio, increased 17 basis points to 3.59% for the first quarter of 2016 from 3.42% in the fourth quarter of 2015 and increased 13 basis point from 3.46% in the first quarter of 2015, as we experienced the first full-quarter benefit from the Fed rate increase in December 2015 and greater contribution from the originated loan portfolio. GAAP net interest margin decreased 2 basis points to 3.84% for the first quarter of 2016 compared to

3.86% in the fourth quarter of 2015, primarily due to lower accretion income from the acquired loan portfolio.

- New loan fundings were $551.7 million in the first quarter of 2016 compared to $468.4 million in the first quarter of 2015. Loan commitments of $630.1 million were originated during the first quarter of 2016 compared to $526.6 million in the first quarter of 2015. While the first quarter normally represents Opus' lowest quarter of new loan fundings and commitments originated, the levels achieved in the first quarter of 2016 were both record highs for first quarter volumes of any year.

- Commercial and Specialty Banking divisions represented 54% of new loan fundings and represented 60% of total new loan commitments originated during the first quarter of 2016.

- Total loans held-for-investment, including acquired loans, increased by $266.6 million, or 5%, during the first quarter of 2016 to $5.8 billion and increased by $1.4 billion, or 32%, from the first quarter of 2015. Originated loans increased by $291.8 million, or 6%, during the first quarter of 2016 to $5.5 billion, and increased by $1.6 billion, or 40%, from the first quarter of 2015.

- Total assets increased 4% to a record $6.9 billion at March 31, 2016 from $6.6 billion at December 31, 2015 and increased 25% from $5.6 billion at March 31, 2015.

- The loan origination pipeline remains robust entering the second quarter and continues to reflect the growth and maturation of our Commercial and Specialty Banking divisions, which increased to 61% of the pipeline on April 1, 2016 from 57% at January 1, 2016.

- Average total deposits increased $131.1 million, or 3%, from the fourth quarter of 2015 to $5.3 billion.

- Net interest income increased 4% to $59.1 million for the first quarter of 2016 compared to $56.7 million for the fourth quarter of 2015.

- Interest income from originated loans increased 11% due to higher average balances and an 11 basis point increase in the yield on originated loans. Interest income from the acquired loan portfolio decreased 29% from the fourth quarter of 2015 due to lower balances of acquired loans and lower accretion income. During the first quarter of 2016, we recognized $3.1 million of accretion income from loans that closed through prepayment, foreclosure and sale, compared to $5.5 million during the fourth quarter of 2015.

- Noninterest income during the first quarter of 2016 totaled $5.3 million compared to $6.0 million in the fourth quarter of 2015 and $3.3 million in the first quarter of 2015.

- Noninterest expense was $30.9 million in the first quarter of 2016 compared to $28.0 million in the fourth quarter of 2015. The increase from the prior quarter was primarily due to $1.2 million of merger and strategic initiative related expenses, which includes costs associated with the acquisition of PENSCO, as well as severance associated with our expense reduction and efficiency improvement strategy, and $3.4 million of seasonal compensation and benefits expenses.

- Our efficiency ratio was 47.9% for the first quarter of 2016 compared to 44.7% for the fourth quarter of 2015 and 55.2% for the first quarter of 2015. Excluding $1.2 million in merger and strategic initiative related expenses, including severance associated with our expense reduction and efficiency improvement strategy, and $3.4 million in seasonal compensation and benefits expense during the first quarter of 2016, our adjusted efficiency ratio was 40.8%, compared to 43.1% in the fourth quarter of 2015.

- Return on average tangible equity increased to 11.5% for the first quarter of 2016 compared to 11.2% for the fourth quarter of 2015 and 8.1% for the first quarter of 2015. Return on average assets was 1.03% for the first quarter of 2016 and the fourth quarter of 2015 compared to 0.85% for the first quarter of 2015.

- Nonperforming assets totaled 0.62% of total assets at March 31, 2016 compared to 0.37% at December 31, 2015 and 0.23% at March 31, 2015. The linked quarter increase was due to one loan relationship placed on nonaccrual during the first quarter of 2016 for which the required allowance remained materially unchanged from the fourth quarter of 2015.

- Provision expense for the first quarter of 2016 was $4.9 million compared to $8.0 million for the fourth quarter of 2015. Net chargeoffs were $302,000 for the first quarter of 2016, or 0.02% of average loans (annualized), compared to $676,000 and 0.05% of average loans (annualized), respectively, during the fourth quarter of 2015.

- Our allowance for loan losses increased to 0.85% of loans as of March 31, 2016 from 0.80% as of December 31, 2015, and our coverage ratio, which includes the remaining discount on the acquired loan portfolio, was 1.03% as of March 31, 2016, compared to 1.08% as of December 31, 2015.

- Our tangible book value per as-converted share at March 31, 2016 increased to $18.73 from $18.28 at December 31, 2015 and $17.08 at March 31, 2015.

Stephen H. Gordon, Founding Chairman, Chief Executive Officer and President of Opus Bank, stated, "We entered 2016 having achieved a record $763 million of new loan fundings during the final quarter of 2015. While the first quarter normally represents Opus' lowest quarter of loan fundings during the year, we completed the first quarter of 2016 having achieved our highest level of first quarter loan fundings in our 5½ year history, along with a 17 basis point increase in our contractual net interest margin and a very robust loan pipeline to fuel anticipated future growth. Our earnings for the first quarter of 2016, when adjusted for merger and strategic initiative related expenses, as well as seasonal compensation and benefits costs, resulted in an adjusted efficiency ratio that exemplifies our ability to meaningfully scale our revenue growth and returns."

Gordon added, "We are very excited to have completed the acquisition of PENSCO and to now begin the realization of our mutual benefits and vision. This transformational acquisition brings Opus to now having over $7 billion of assets on-balance sheet, nearly $11 billion of custodial assets off-balance sheet and a new source of diversified revenue through our entry into the wealth services business with the addition of over 45,000 new clients."

Gordon concluded, "We are pleased to announce today that the Board of Directors has approved increasing our quarterly cash dividend by 20% to $0.18 per share, which reflects our strong capital position, asset quality, liquidity, increasing earnings power and return metrics, and confidence in our ability to meaningfully scale revenue while increasing our return on capital."

* * *

<u>Asset Quality</u>

We continue to experience strong asset quality as our loan portfolio seasons, evidenced by the low balance of nonperforming assets and low ratio of nonperforming assets to total assets. Nonperforming assets totaled $42.8 million, or 0.62% of total assets as of March 31, 2016, compared to $24.3 million, or 0.37% of total assets as of December 31, 2015, and $12.7 million, or 0.23% of total assets as of March 31, 2015. The increase in nonperforming assets during the first quarter of 2016 was due to one current loan relationship placed on nonaccrual during the first quarter of 2016 for which the required allowance remains materially unchanged from the fourth quarter of 2015.

We recorded a total provision for loan losses of $4.9 million in the first quarter of 2016 compared to $8.0 million in the fourth quarter of 2015 and $3.6 million in the first quarter of 2015. The provision recapture on the acquired loan portfolio totaled $151,000 in the first quarter of 2016, $359,000 during the fourth quarter of 2015 and $202,000 in the first quarter of 2015. A provision for loan losses of $5.1 million was recorded on the originated loan portfolio during the first quarter of 2016 compared to $8.4 million in the fourth quarter of 2015 and $3.8 million in the first quarter of 2015. The provision for loan losses during the current quarter on the originated loan portfolio was comprised of $1.9 million for portfolio growth and $3.2 million for changes in specific reserves, individual risk ratings and loss factors. Net charge offs totaled $302,000, or 0.02% of average loans (annualized), for the first quarter of 2016 compared to $676,000 and 0.05%, respectively, during the fourth quarter of 2015.

Our allowance for loan losses represented 0.85% of our total loan portfolio at March 31, 2016 as compared to 0.80% at December 31, 2015 and 0.57% at March 31, 2015. We have continued to see the allowance as a percentage of total loans increase due to our strategic shift in the mix of our loan portfolio toward more commercial business loans, which require a higher allowance relative to our multifamily loans. At March 31, 2016, the total originated loan portfolio was comprised of 48% multifamily loans with the remaining portfolio comprised primarily of commercial business loans. This compares to

> 49% multifamily loans as of December 31, 2015 and 58% multifamily loans as of March 31, 2015. The coverage ratio for the total loan portfolio, which includes the remaining discount on the acquired loan portfolio, at March 31, 2016 was 1.03% compared to 1.08% at December 31, 2015 and 1.45% at March 31, 2015, declining as the originated loan portfolio continues to increase as a percentage of total loans. Our allowance for loan losses on originated loans resulted in a coverage ratio of 0.87% at March 31, 2016, an increase from 0.82% at December 31, 2015 and 0.57% at March 31, 2015.

24. On May 6, 2016, Defendants caused the Company to file its Quarterly Report with the FDIC on Form 10-Q for the fiscal quarter ended March 31, 2016. The Company's Form 10-Q was signed by Defendant Gordon, and reaffirmed the Company's financial results announced in the press release issued on April 25, 2016. The Form 10-Q contained certifications pursuant to SOX, one which was signed by Defendant Gordon.

25. On July 25, 2016, Defendants caused the Company to issue a press release entitled *Opus Bank Announces Second Quarter 2016 Results*. It was in this press release that the Company reported in relevant part:

> IRVINE, Calif. -- (BUSINESS WIRE) -- Opus Bank ("Opus") (NASDAQ: "OPB") announced today net income of $16.1 million, or $0.46 per diluted share, for the second quarter of 2016 compared to $17.3 million, or $0.51 per diluted share, for the first quarter of 2016 and $17.5 million, or $0.52 per diluted share, for the second quarter of 2015. Net income increased by 17% to $33.4 million, or $0.97 per diluted share, for the six months ended June 30, 2016 from $28.6 million, or $0.86 per diluted share, for the six months ended June 30, 2015. Net income in the second quarter included $3.4 million of merger and strategic initiative related expenses, including costs associated with the acquisition of PENSCO Services, LLC and its wholly-owned subsidiary PENSCO Trust Company ("PENSCO"), which closed on April 13, 2016, and the addition of $7.6 million of provision expense

related to four specific loan relationships, including loans in our Technology Banking portfolio. Pre-tax pre-provision earnings increased 11% to $37.3 million for the second quarter of 2016 from $33.6 million in the prior quarter, and increased 26% to $70.9 million for the six months ended June 30, 2016 from $56.2 million for the six months ended June 30, 2015.

Additionally, Opus announced that its Board of Directors approved increasing its quarterly cash dividend by 11% to $0.20 per share payable on August 18, 2016 to common and preferred shareholders of record as of August 4, 2016.

Stephen H. Gordon, Founding Chairman, Chief Executive Officer and President of Opus Bank, stated, "Opus' performance during the second quarter of 2016 was marked by record second quarter loan fundings, continued strong growth in both loans and low-cost core deposits, and record fee income contributed by our Merchant Bank, Escrow and Exchange divisions, and our PENSCO Trust Company subsidiary acquired during the quarter. We also achieved record levels of net interest income, total revenues, and pre-tax pre-provision earnings in the second quarter, aided by our continued focus on waste avoidance and efficiency improvement, and our initiatives undertaken earlier this year." Gordon added, "The quarter was also marked by elevated provision for potential loan losses associated with Opus' Technology Banking division loans, as well as provisions required due to our record second-quarter new loan fundings and continued success shifting the mix of our loan portfolio more heavily toward C&I loans." Gordon concluded, "Given the recent volatility in the Tech markets, this quarter's resultant low risk-adjusted returns experienced in our Tech lending division, and that Opus' second quarter earnings were masked in part by provisions due to downgrade-related movements in this portfolio, we've determined here at the start of the current third quarter to deemphasize our Technology Banking niche lending focus for the foreseeable future, and thereby unleash Opus' true earnings potential. Strong growth within Opus' other Commercial and Specialty Banking divisions and its Income Property Banking division continue to drive strong risk-adjusted returns and result in no change to Opus' previously established growth goals."

Second Quarter 2016 Highlights

- PENSCO's assets under custody increased to $12.0 billion as of June 30, 2016 compared to $10.7 billion as of the close of the acquisition on April 13, 2016. The referral agreement with Morgan Stanley Smith Barney LLC resulted in a bulk transfer of over 5,800 self-directed individual retirement accounts and $1 billion of assets during the second quarter, and has resulted in over 200 referral accounts representing $62 million of assets through June 30, 2016. Additionally, Opus entered into a successor custodian and referral agreement with UBS Financial Services Inc. during the second quarter.

- Following the close of the acquisition on April 13, 2016, PENSCO generated $6.3 million of trust administrative fee income during the second quarter of 2016.

- As of June 30, 2016, PENSCO ancillary custodial client cash balances held on deposit at Opus totaled $863.3 million with a weighted average rate of 0.02%. PENSCO's ancillary custodial cash balances still held at other financial institutions totaled $318.5 million at June 30, 2016.

- Opus' cost of deposits decreased four basis points to 0.44% for the second quarter of 2016 from 0.48% for the first quarter of 2016 due to the increase in low-cost core transaction account deposits from the transition of PENSCO ancillary custodial client cash balances during the quarter.

- New loan fundings increased to $660.6 million in the second quarter of 2016 compared to $551.7

million in the first quarter of 2016 and $543.8 million in the second quarter of 2015. Loan commitments of $767.2 million were originated during the second quarter of 2016 compared to $630.1 million in the first quarter of 2016 and $598.9 million during the second quarter of 2015. These levels of new loan fundings and loan commitments originated during the second quarter of 2016 were both record highs for second quarter volumes of any year.

- Total loans held-for-investment, including acquired loans, increased by $362.7 million, or 6%, during the second quarter of 2016 to $6.1 billion and increased by $1.5 billion, or 32%, from the second quarter of 2015. Originated loans increased by $398.5 million, or 7%, during the second quarter of 2016 to $5.9 billion, and increased by $1.7 billion, or 39%, from the second quarter of 2015.

- Commercial and Specialty Banking divisions represented 64% of total new loan commitments originated and 58% of new loan fundings during the second quarter of 2016.

- The loan origination pipeline remains robust entering the second quarter and continues to reflect the growth and maturation of our Commercial and Specialty Banking divisions, which represented 68% of the pipeline on July 1, 2016.

- Total assets increased 8% to a record $7.5 billion at June 30, 2016 from $6.9 billion at March 31, 2016 and increased 28% from $5.8 billion at June 30, 2015.

- Total deposits increased $940.5 million, or 18%, during the second quarter of 2016 and increased

$1.6 billion, or 35%, from the second quarter of 2015, which included significant contribution from our PENSCO acquisition. Also, our Municipal Banking division, which banks local municipalities in western markets in which Opus operates, added $94.8 million of deposits during the second quarter of 2016. As a result, the percentage of low-cost core transaction account deposits rose to over 91% of total deposits as of June 30, 2016.

- FHLB advances decreased to $135.0 million as of June 30, 2016 compared to $750.0 million as of March 31, 2016 and $365.0 million at June 30, 2015.

- Opus' loan to deposit ratio decreased to 99% as of June 30, 2016 from 110% as of March 31, 2016, primarily as a result of the transition of PENSCO ancillary custodial client cash balances during the second quarter.

- Net interest income increased 6% to $62.5 million for the second quarter of 2016 compared to $59.1 million for the first quarter of 2016. Interest income from originated loans increased 4% due to higher average balances during the second quarter of 2016. Interest income from the acquired loan portfolio increased 10% from the first quarter of 2016 due to higher accretion income, partially offset by lower balances of acquired loans. During the second quarter of 2016, we recognized $4.4 million of accretion income from loans that closed through prepayment, foreclosure and sale, compared to $3.1 million during the first quarter of 2016

- Noninterest income during the second quarter of 2016 increased to $13.2 million compared to $5.3 million in the first quarter of 2016 and $8.1 million in the second quarter of 2015. The increase from the prior quarter was primarily due to the addition of $6.3 million of trust administrative fees generated by our PENSCO subsidiary, which was acquired on April 13, 2016, a record $2.0 million of fees generated by our Escrow and Exchange divisions and $1.8 million of advisory fee income generated by our Merchant Bank, including our broker-dealer subsidiary, Opus Financial Partners. Net equity warrant valuation changes reduced total noninterest income by $942,000 during the second quarter.

- Noninterest expense was $38.4 million in the second quarter of 2016 compared to $30.9 million in the first quarter of 2016 and $28.6 million in the second quarter of 2015. The increase from the prior quarter was primarily due to $3.4 million of merger and strategic initiative related expenses, which includes costs associated with the acquisition of PENSCO, as well as higher compensation and benefits expense, occupancy expense, office services expense, and amortization of intangible assets due to the acquisition and integration of PENSCO.

- Our efficiency ratio was 50.7% for the second quarter of 2016 compared to 47.9% for the first quarter of 2016 and 45.3% for the second quarter of 2015. Excluding the $3.4 million in merger and strategic initiative related expenses incurred during the second quarter of 2016, our adjusted efficiency ratio was 46.3%.

- Return on average tangible equity was 11.14% for the second quarter of 2016 compared to 11.46% for the first quarter of 2016 and 12.54% for the second quarter of 2015. Return on average assets was 0.89% for the second quarter of 2016 compared to 1.03% for the first quarter of 2016 and 1.23% for the second quarter of 2015. Excluding merger and strategic initiative related expenses during the second quarter, our adjusted return on average tangible equity and return on average assets were

12.56% and 1.01%, respectively.

- Nonperforming assets totaled 1.06% of total assets at June 30, 2016 compared to 0.62% at March 31, 2016 and 0.22% at June 30, 2015. The linked quarter increase in nonperforming assets was primarily due to continued resolution efforts on three loan relationships, including two large Technology Banking division relationships which moved to nonaccrual status during the second quarter, impacting both nonperforming assets and the allowance for loan losses.

- Provision expense for the second quarter of 2016 was $10.9 million compared to $4.9 million for the first quarter of 2016 and $5.8 million for the second quarter of 2015. The increase in provision expense during the second quarter of 2016 was primarily due to four loan relationships, including two Technology Banking division loans, one Commercial Banking division loan, and one Healthcare Banking division loan, that experienced risk rating migration and required additional specific reserves representing $7.6 million of the total, as well as an additional $3.2 million provision for loan growth during the quarter. Net charge-offs were $24,000 for the second quarter of 2016, or 0.00% of average loans (annualized), compared to $302,000 and 0.02% of average loans (annualized), respectively, during the first quarter of 2016.

- During the third quarter of 2016, Opus decided to deemphasize our Technology Banking lending focus, as risk-adjusted returns within this division do not meet our standards for profitability at this stage of Opus' evolution. As of June 30, 2016, Technology Banking division loans outstanding totaled $279.5 million and total loan commitments were $316.4 million, or approximately 4.5% of Opus total loans outstanding and 4.7% of total loan commitments, respectively.

- Our allowance for loan losses increased to 0.97% of loans as of June 30, 2016 from 0.85% as of March 31, 2016, and our coverage ratio, which includes the remaining discount on the acquired loan portfolio, was 1.07% as of June 30, 2016, compared to 1.03% as of March 31, 2016.

- On June 29, 2016 we completed a public offering and sale of $135.0 million of 5.50% fixed-to-floating rate subordinated notes due 2026 (the "Notes"). The Notes were sold at par, resulting in net proceeds, after discounts and estimated offering expenses, of approximately $132.3 million. The Kroll Bond Rating Agency has assigned a rating of BBB+ to the Notes and the proceeds are treated as Tier 2 capital for regulatory purposes at June 30, 2016.

* * *

<u>Asset Quality</u>

Nonperforming assets totaled $79.4 million, or 1.06% of total assets as of June 30, 2016, compared to $42.8 million, or 0.62% of total assets as of March 31, 2016, and $12.6 million, or 0.22% of total assets as of June 30, 2015. The increase in nonperforming assets during the second quarter of 2016 was primarily due to three loan relationships, including two Technology Banking division relationships, which moved to nonaccrual status during the second quarter through efforts reflecting the bank's continued support for resolution.

We recorded a total provision for loan losses of $10.9 million in the second quarter of 2016 compared to $4.9 million in the first quarter of 2016 and $5.8 million in the second quarter of 2015. A provision for loan losses of $11.1 million was recorded on the originated loan portfolio during the second quarter of 2016 compared to $5.1 million in the first quarter of 2016 and $6.2 million in the

> second quarter of 2015. The provision for loan losses during the current quarter on the originated loan portfolio was comprised of $3.2 million for portfolio growth and $7.9 million for changes in specific reserves, individual risk ratings and loss factors, predominantly the increase in provision against four loan relationships, as the bank continues to work the relationships for optimal outcome. Net charge-offs totaled $24,000, or 0.00% of average loans (annualized), for the second quarter of 2016 compared to $302,000 and 0.02%, respectively, during the first quarter of 2015. The provision recapture on the acquired loan portfolio totaled $145,000 in the second quarter of 2016, $151,000 during the first quarter of 2016 and $387,000 in the second quarter of 2015.
>
> Our allowance for loan losses represented 0.97% of our total loan portfolio at June 30, 2016 as compared to 0.85% at March 31, 2016 and 0.66% at June 30, 2015. As expected, we have continued to see the allowance as a percentage of total loans increase due to our strategic shift in the mix of our loan portfolio toward more commercial business loans, which require a higher allowance relative to our multifamily loans. At June 30, 2016, the total originated loan portfolio was comprised of 47% multifamily loans with the remaining portfolio comprised primarily of commercial business loans. This compares to 48% multifamily loans as of March 31, 2016 and 55% multifamily loans as of June 30, 2015. The coverage ratio for the total loan portfolio, which includes the remaining discount on the acquired loan portfolio, at June 30, 2016 was 1.07% compared to 1.03% at March 31, 2016 and 1.22% at June 30, 2015. The remaining discount on acquired loans was $6.1 million as of June 30, 2016, compared to $10.7 million as of March 31, 2016 and $26.1 million as of June 30, 2015. Our allowance for loan losses on originated loans resulted in a coverage ratio of 1.00% at June 30, 2016, an increase from 0.87% at March 31, 2016 and 0.67% at June 30, 2015.

26. On August 5, 2016, Defendants caused the Company to file its Quarterly Report with the FDIC on Form 10-Q for the fiscal quarter ended June 30,

2016. The Company's Form 10-Q was signed by Defendant Gordon , and reaffirmed the Company's financial results announced in the press release issued on July 25, 2016. The Form 10-Q contained certifications pursuant to SOX, one which was signed by Defendant Gordon.

27. The above statements were materially false and/or misleading, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, these statements were false and/or misleading statements and/or failed to disclose that: (1) certain of the Company's loans were of poor quality; (2) the Company was over-representing the quality of the loans to the public; (3) as such, the Company failed to properly account for the loans in violation of GAAP; (4) as a result, the Company would be forced to recognize large charge-offs associated with the loans; (5) the Company lacked adequate internal controls over accounting and financial reporting; and (6) as a result of the foregoing, Defendants' positive statements about Opus's business, operations, and prospects, were false and misleading and/or lacked a reasonable basis.

<u>DISCLOSURES AT THE END OF THE RELEVANT PERIOD</u>

28. On October 17, 2016, Defendants caused the Company to issue a press release entitled Opus *Bank Announces Loan Charge-Offs Will Impact Third Quarter Earnings*. It was in this press release that the Company reported in relevant part:

> IRVINE, Calif. -- (BUSINESS WIRE) -- Opus Bank ("Opus") (NASDAQ: OPB) announced today that earnings for the third quarter 2016, which will be announced on October 24, 2016 before the market opens, will include a $0.59 per diluted share impact from loan charge offs and is expected to result in a net loss of approximately $0.05 per diluted share for the third quarter of 2016.
>
> As part of the credit review process of impaired loans, new

developments supported charge-offs being recognized on eight loan relationships through the allowance for loan losses at September 30, 2016. Charge-offs were recorded on these eight loan relationships, which have been impacting the provision for loan losses and earnings for the past eight quarters and include three of the same loan relationships that were discussed during Opus' second quarter 2016 earnings conference call. Charge-offs for the eight loan relationships totaled $38.8 million and had specific reserves of $16.7 million previously recorded. In addition, these charge-offs increased the reserve levels recorded against the remaining loan portfolio by $13.6 million as a result of higher loss factors incorporated into our allowance for loan losses methodology to reflect the charge-offs in the third quarter of 2016.

Two loan relationships originated by our Technology Banking division, which we previously announced would be deemphasized, contributed $22.2 million, or 57%, of the charge-offs and $8.1 million, or 60%, of the increased reserves as a result of higher loss factors. The remaining six loan relationships that had $16.6 million of charge-offs were from across our Commercial and Specialty Banking divisions. These eight loan relationships had a remaining balance of $19.1 million as of September 30, 2016 and have been charged off to the estimated fair value of each loan's underlying collateral.

Total nonperforming assets decreased 44% to $44.8 million, or 0.58% of total assets, as of September 30, 2016 compared to $79.4 million, or 1.06% of total assets, as of June 30, 2016. Total delinquencies decreased 55% to $21.7 million as of September 30, 2016 compared to $48.5 million as of June 30, 2016, and total criticized loans were $147.4 million as of September 30, 2016 compared to $146.5 million as of June 30, 2016. The ratio of our allowance for loan losses to total loans was 0.94% as of September 30, 2016 compared to 0.97% as of June 30, 2016. Our coverage ratio, which includes the remaining discount on the acquired loan portfolio, was 1.01% as of September 30, 2016 compared to 1.07% as of June 30, 2016.

> Our Tier 1 leverage ratio is expected to be 8.16%, Common Equity Tier 1 ratio is expected to be 9.24% and total risk-based capital ratio is expected to be 12.29% as of September 30, 2016, compared to 8.52%, 9.74% and 12.93%, respectively, as of June 30, 2016.

29. On this news, the Company's stock price fell $7.25 per share, or 21%, to close at $27.20 per share on October 17, 2016.

30. The stock continued to fall over the subsequent trading sessions, and fell a further $7.10 per share, or nearly 27%, to close on October 26, 2016 at $20.10 after the Company held a conference call with investors on October 24, 2016, to discuss the loan losses.

DUTIES OF INDIVIDUAL DEFENDANTS

31. By reason of their positions as officers, directors, and/or fiduciaries of Opus and because of their ability to control the business and corporate affairs of Opus, Defendants owed the Company and its shareholders fiduciary obligations of trust, loyalty, good faith and due care, and were and are required to use their utmost ability to control and manage Opus in a fair, just, honest, and equitable manner. Defendants were and are required to act in furtherance of the best interests of Opus and its shareholders so as to benefit all shareholders equally, and not in furtherance of their personal interest or benefit.

32. Each director and officer of the Company owes to Opus and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, as well as the highest obligations of fair dealing. In addition, as officers and/or directors of a publicly held company, Defendants had a duty to promptly disseminate accurate and truthful information with regard to the Company's operations, finances, financial condition, and present and future

business prospects so that the market price of the Company's stock would be based on truthful and accurate information.

33. Defendants, because of their positions of control and authority as directors and/or officers of Opus, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by the Company. Because of their advisory, executive, managerial and directorial positions with Opus, each of the Defendants had access to adverse non-public information about the financial condition, operations, sales and marketing practices, and improper representations of Opus.

34. To discharge their duties, the officers and directors of Opus were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of Opus were required to, among other things:

a) ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the investing public;

b) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

c) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's business prospects, and ensuring that the Company maintained an adequate system of financial controls such that the Company's financial reporting would be true and accurate at all times;

d) remain informed as to how Opus conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, take steps to correct such conditions or practices and make such disclosures as necessary to comply with federal and state securities laws; and

e) ensure that the Company was operated in a diligent, honest and prudent manner in compliance with all applicable federal, state and local laws, rules and regulations;

35. Each Defendant, by virtue of his position as a director and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith, and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Opus, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its shareholders that Defendants were aware or should have been aware posed a risk of serious injury to the Company.

36. Each director and officer of the Company owed to Opus the fiduciary duty to exercise due care and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of good faith and fair dealing. In addition, as officers and/or directors of a publicly held company, Defendants had a duty not to advance their own personal, financial, or economic interests over, and at the expense of, the Company's public shareholders, or to allow other Opus directors, officers, and/or employees to do so. Each director and officer of the Company also owed Opus and its shareholder-owners the duty to maintain the Company's confidential

information and prevent others from misappropriating and/or trading while in possession of the Company's proprietary, confidential information.

37. Defendants breached their duties of loyalty and good faith by causing the Company to misrepresent the information as detailed *infra*. Defendants' subjected the Company to the costs of defending and the potential liability from a class action lawsuit for violations of the federal securities laws. As a result, Opus has expended, and will continue to expend, significant sums of money.

38. Defendants' actions have irreparably damaged Opus's corporate image and goodwill. Moreover, Defendants have misled the investing public to such an extent that Opus's ability to raise equity capital or debt on favorable terms in the future is now impaired.

DERIVATIVE AND DEMAND FUTILITY

ALLEGATIONS FOR THE BOARD OF OPUS

39. Plaintiff will adequately and fairly represent the interests of Opus and its shareholders in enforcing and prosecuting its rights.

40. Plaintiff brings this action derivatively in the right and for the benefit of Opus to redress injuries suffered and to be suffered by Opus because of the breaches of fiduciary duty by the Individual Defendants.

41. Because of the facts set forth herein, Plaintiff has not made a demand on the Board of Opus to institute this action against Defendants. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

42. The Opus Board is currently comprised of Gordon, Glovier, Bowers, Cicirelli, King, Schaffer, Meyer and Schackleton. Thus, Plaintiff is required to show that a majority of Defendants, *i.e.*, four (4), cannot exercise independent objective judgment about whether to bring this action or whether to vigorously prosecute this action.

43. Defendants face a substantial likelihood of liability in this action because they caused Opus to issue false and misleading statements concerning the information described herein. Because of their advisory, executive, managerial, and directorial positions with Opus, Defendants had knowledge of material non-public information regarding the Company and was directly involved in the operations of the Company at the highest levels.

44. Defendants either knew or should have known of the false and misleading statements that were issued on the Company's behalf and took no steps in a good faith effort to prevent or remedy that situation, proximately causing millions of dollars of losses for Opus shareholders.

45. Defendants (or at the very least a majority of them) cannot exercise independent objective judgment about whether to bring this action or whether to vigorously prosecute this action. For the reasons that follow, and for reasons detailed elsewhere in this Complaint, Plaintiff has not made (and is excused from making) a pre-filing demand on the board to initiate this action because making a demand would be a futile and useless act.

46. Any suit by the Board to remedy these wrongs would likely expose the Company to further violations of the securities laws that would result in civil actions being filed; thus, the Board members are hopelessly conflicted in making any supposedly independent determination about whether to sue themselves.

47. Defendants approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from the Company's stockholders or recklessly and/or with gross negligence disregarded the wrongs complained of herein, and are therefore not disinterested parties.

48. Defendants authorized and/or permitted the Company to make false statements that disseminated directly to the public and made available and distributed to shareholders, authorized and/or permitted the issuance of various false and misleading statements, and are principal beneficiaries of the wrongdoing

alleged herein, and thus, could not fairly and fully prosecute such a suit even if they instituted it.

Defendants Are Not Independent

Defendant Gordon

49. Gordon is Chairman of the Board, Chief Executive Officer ("CEO"), and President of Opus.

50. Defendant Gordon is not disinterested or independent, and therefore, is incapable of considering demand because Gordon (as CEO) is an employee of the Company who derived substantially all of his income from his employment with Opus, making him not independent. As such, Gordon cannot independently consider any demand to sue himself for breaching his fiduciary duties to the Company, because that would expose him to liability and threaten his livelihood.

51. Gordon also lacks independence from Cicirelli, Schaffer, Meyer, Schackleton, and Bowers, all who are not disinterested and who exerted influence over Gordon's compensation by virtue of their positions as representing the entire Compensation Committee.

52. Gordon also owns 6.04% of all the outstanding shares.

53. Further, Gordon previously served as the Chairman of the Board of Fremont General Corporation ("Fremont") and Fremont Reorganizing Corporation, formerly Fremont Investment and Loan ("FRC") from November 2007 to June 2010 and as Chief Executive Officer of FRC from December 2007 to September 2008.

54. Prior to Fremont, Gordon was the Founding Chairman and Chief Executive Officer of Commercial Capital Bancorp, Inc. ("CCBI"), and its subsidiary companies: Commercial Capital Bank ("CCB"), a federally chartered savings bank headquartered in Irvine, CA; Commercial Capital Mortgage, a commercial mortgage banking company; and Comcap Financial Services, a

registered broker dealer. CCBI was acquired by Washington Mutual, Inc., in an all-cash transaction valued at approximately $1 billion in October 2006.

Defendant Glovier

55. Glovier has served as a member of the Board since September 2010.

56. Glovier is also Chairman and Chief Executive Officer of PensCo Trust Company, a wholly-owned subsidiary of Opus; Senior Executive Vice President, Head of Wealth Services of Opus; and Senior Managing Director of the Merchant Banking division.

57. Glovier is not disinterested or independent, and therefore, is incapable of considering demand because Glovier (Senior Executive Vice President, Head of Wealth Services of Opus) is an employee of the Company who derived substantially all of his income from his employment with Opus, making him not independent. As such, Glovier cannot independently consider any demand to sue himself for breaching his fiduciary duties to the Company, because that would expose him to liability and threaten his livelihood.

58. Glovier also lacks independence from Cicirelli, Schaffer, Meyer, Schackleton, and Bowers, all who are not disinterested and who exerted influence over Glovier's compensation by virtue of their positions as representing the entire Compensation Committee.

59. From May 2007 to July 2016, Glovier served as a Managing Director at Fortress, responsible for the private equity effort within Fortress's credit business.

60. Glovier is also a Managing Director at Fortress, responsible for the private equity effort within Fortress's credit business. In that capacity, he manages the origination, execution, and monitoring of private equity, mezzanine, and other investments.

61. Glovier is also on the investment committee of a number of Fortress investment funds, including the Fortress Credit Opportunities Funds, which

invest in mortgage-backed securities, loans, and other credit-related opportunities.

62. Fortress owns 15.65% of all the outstanding shares of the Company stock.

Defendant Bowers

63. Bowers has served as a member of the Company's Board since June 2016.

64. Bowers is a member of the Compensation Committee.

65. Bowers serves as Managing Director and Chief Operating Officer of Starwood Capital Group. Bowers serves on Starwood's Executive and Investment Committees, and is a Trustee of Colony Starwood Homes (NYSE: SFR), a Starwood Capital Group affiliate that is one of the largest publicly traded investors, owners, and operators of single-family homes in the nation.

Defendant Cicirelli

66. Cicirelli has served as a member of the Company's Board since March 2012.

67. Cicirelli is a member of the Audit Committee.

68. During the Relevant Period, Cicirelli served as a member of the Audit Committee. Pursuant to the Company's Audit Committee Charter, the members of the Audit Committee are responsible for, *inter alia*, overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company. Specifically, the members of the Audit Committee are required to: (i) review the type and presentation of information to be included in the Company's earnings press releases, as well as financial information and earnings guidance provided by the Company to analysts and rating agencies, (ii) review the adequacy and effectiveness of the Company's accounting and internal control policies and procedures on a regular basis, and (iii) review the adequacy of the Company's independent auditor. Cicirelli

breached his fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted false and misleading statements to be disseminated in the Company's FDIC filings and other disclosures and, otherwise, failed to ensure that adequate internal controls were in place regarding the serious accounting issues and deficiencies described above. Therefore, Cicirelli face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile

69. Cicirelli is also a member of the Compensation Committee.

70. Cicirelli is a Portfolio Manager at Elliott Management Corporation ("Elliott"), a multi-strategy hedge fund with approximately $23 billion of assets under management. Cicirelli joined Elliott in 2005 and specializes in financial services and real estate.

71. Elliott Associates, L.P. and Elliott Opus Holdings LLC have a combined controlling interest of 16.33% of all the outstanding shares of the Company.

Defendant King

72. King has served as a member of the Company's Board since October 2016.

73. King is a member of the Audit Committee.

74. During the Relevant Period, King served as a member of the Audit Committee. Pursuant to the Company's Audit Committee Charter, the members of the Audit Committee are responsible for, *inter alia*, overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company. Specifically, the members of the Audit Committee are required to: (i) review the type and presentation of information to be included in the Company's earnings press releases, as well as financial information and earnings guidance provided by the Company to analysts and rating agencies, (ii) review the adequacy and effectiveness of the Company's accounting and internal

control policies and procedures on a regular basis, and (iii) review the adequacy of the Company's independent auditor. King breached his fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted false and misleading statements to be disseminated in the Company's FDIC filings and other disclosures and, otherwise, failed to ensure that adequate internal controls were in place regarding the serious accounting issues and deficiencies described above. Therefore, King face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile

75. Prior to joining Fortress in 2014, King founded and led Culpeper Capital Partners LLC.

76. King served at Fortress at the same time as Glovier.

Defendant Schaffer

77. Schaffer has served as a member of the Board since September 2010.

78. Schaffer is a member of the Audit Committee.

79. During the Relevant Period, Schaffer served as a member of the Audit Committee. Pursuant to the Company's Audit Committee Charter, the members of the Audit Committee are responsible for, *inter alia*, overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company. Specifically, the members of the Audit Committee are required to: (i) review the type and presentation of information to be included in the Company's earnings press releases, as well as financial information and earnings guidance provided by the Company to analysts and rating agencies, (ii) review the adequacy and effectiveness of the Company's accounting and internal control policies and procedures on a regular basis, and (iii) review the adequacy of the Company's independent auditor. Schaffer breached his fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted false and misleading

statements to be disseminated in the Company's FDIC filings and other disclosures and, otherwise, failed to ensure that adequate internal controls were in place regarding the serious accounting issues and deficiencies described above. Therefore, Schaffer face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile

80. Schaffer is a member of the Compensation Committee.

81. Schaffer served as a director of Fremont and FRC from January 2008 to June 2010. He was the chairman of Fremont's Legal Committee and also served on the company's audit and compensation committees.

82. Prior to the Fremont companies, Schaffer served as a director of CCB, a federally chartered savings bank and wholly owned subsidiary of CCBI, from March 2003 until October 2006, when CCBI was acquired by Washington Mutual. Schaffer also served as a director of CCBI from February 2004 to June 2004.

83. Schaffer served at Fremont at the same time Gordon served.

Defendant Meyer

84. Meyer has served as a member of the Board since September 2010.

85. Meyer is a member of the Audit Committee.

86. During the Relevant Period, Meyer served as a member of the Audit Committee. Pursuant to the Company's Audit Committee Charter, the members of the Audit Committee are responsible for, *inter alia*, overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company. Specifically, the members of the Audit Committee are required to: (i) review the type and presentation of information to be included in the Company's earnings press releases, as well as financial information and earnings guidance provided by the Company to analysts and rating agencies, (ii) review the adequacy and effectiveness of the Company's accounting and internal control policies and procedures on a regular basis, and (iii) review the adequacy

of the Company's independent auditor. Meyer breached his fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted false and misleading statements to be disseminated in the Company's FDIC filings and other disclosures and, otherwise, failed to ensure that adequate internal controls were in place regarding the serious accounting issues and deficiencies described above. Therefore, Meyer face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile

87. Meyer is also a member of the Compensation Committee.

Defendant Shackleton

88. Shackleton has served as a member of the Board since September 2010.

89. Shackleton is the Chairman of the Audit Committee.

90. During the Relevant Period, Shackleton served as a member of the Audit Committee. Pursuant to the Company's Audit Committee Charter, the members of the Audit Committee are responsible for, *inter alia*, overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company. Specifically, the members of the Audit Committee are required to: (i) review the type and presentation of information to be included in the Company's earnings press releases, as well as financial information and earnings guidance provided by the Company to analysts and rating agencies, (ii) review the adequacy and effectiveness of the Company's accounting and internal control policies and procedures on a regular basis, and (iii) review the adequacy of the Company's independent auditor. Shackleton breached his fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, inter alia, allowed or permitted false and misleading statements to be disseminated in the Company's FDIC filings and other disclosures and, otherwise, failed to ensure that adequate internal controls were in place regarding

the serious accounting issues and deficiencies described above. Therefore, Shackleton face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile.

91. Shackleton is also the Chairman of the Compensation Committee.

92. Shackleton served as a director of Fremont and FRC from January 2008 to June 2010. He was the chairman of Fremont's audit committee and a member of Fremont's governance and nominating and compensation committees. Shackleton was also chairman of FRC's audit committee.

93. Prior to the Fremont companies, Shackleton served as a director of CCBI from February 2001 and as a director of CCB from February 2001 until it was acquired by Washington Mutual in October 2006. He served as chairman of the audit committee of both the bank and holding company.

94. Shackleton, Schaffer and Gordon all served at similar times at Fremont and CCB.

Related Transactions

95. In connection with the recapitalization of Opus in September 2010, a significant percentage of Opus capital stock was purchased by entities affiliated with Elliott, Fortress, and Starwood Capital Group ("Starwood" and collectively with Elliott and Fortress, the "Significant Investors").

96. In connection with Opus's recapitalization in September 2010, Opus entered into stock subscription agreements with each of the Significant Investors. Pursuant to the terms of their respective stock subscription agreements, each of these Significant Investors has the right to nominate a representative to the Opus so long as such investor and its affiliates continue to satisfy the ownership criteria.

97. Cicirelli and Glovier are the current board representatives of Elliott and Fortress, respectively.

FIRST CAUSE OF ACTION

Against All Defendants For Breach of Fiduciary Duty

98. Plaintiff incorporates by reference and re-alleges each allegation contained above, as though fully set forth herein.

99. Defendants owed and owe Opus fiduciary obligations. By reason of their fiduciary relationships, Defendants owed and owe Opus the highest obligation of good faith, fair dealing, loyalty and due care.

100. Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

101. The Relevant Period Defendants had actual or constructive knowledge that they had caused the Company to improperly misrepresent the business prospects of the Company and failed to correct the Company's publicly reported financial guidance. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

102. As a direct and proximate result of Defendants' failure to perform their fiduciary obligations, Opus has sustained significant and actual damages. As a result of the misconduct alleged herein, Defendants are liable to the Company.

103. Plaintiff, on behalf of Opus, has no adequate remedy at law.

SECOND CAUSE OF ACTION

Against The Relevant Period Defendants For Gross Mismanagement

104. Plaintiff incorporates by reference and re-alleges each allegation contained above, as though fully set forth herein.

105. By their actions alleged herein, the Relevant Period Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets

and business of Opus in a manner consistent with the operations of a publicly held corporation.

106. As a direct and proximate result of Defendants' gross mismanagement and breaches of duty alleged herein, Opus has sustained significant financial and reputational damage.

107. As a result of the misconduct and breaches of duty alleged herein, Defendants are liable to the Company.

108. Plaintiff, on behalf of Opus, has no adequate remedy at law.

THIRD CAUSE OF ACTION

Against Defendants for Unjust Enrichment

109. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

110. By their wrongful acts and omissions, Defendants were unjustly enriched at the expense of and to the detriment of Opus in the form of salaries, bonuses, and other forms of compensation.

111. Plaintiff, as a shareholder and representative of Opus, seeks restitution from Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these Defendants, and each of them, from their wrongful conduct and fiduciary breaches.

FOURTH CAUSE OF ACTION

Against Defendants for Violations of Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9

112. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

113. Rule 14a-9 was enacted pursuant to § 14(a) of the Securities Exchange of 1934, and provides in relevant part:

> "No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading . . . ."

114. In this case the Company's Proxy statement dated March 6, 2015 violated § 14(a) and Rule 14a-9 because it omitted material information regarding Defendants wrongful conduct, and included by reference materially false and misleading financial statements.

115. The Company's Schedule 14A, dated March 6, 2015 (the "2015 Proxy") incorporated by reference all of the Company's public filings over the previous year.

116. Defendants caused the Company to issue the 2015 Proxy containing false and misleading information and/or failed to disclose material adverse information about the Company:

(a) certain of the Company's loans were of poor quality;

(b) the Company was over-representing the quality of the loans to the public;

(c) as such, the Company failed to properly account for the loans in violation of GAAP;

(d) as a result, the Company would be forced to recognize large charge-offs associated with the loans;

(e) the Company lacked adequate internal controls over accounting and financial reporting; and

(f) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were false and misleading and/or lacked a reasonable basis.

117. In the exercise of reasonable care, Defendants should have known that the statements contained in the 2015 Proxy were materially false and misleading.

118. The misrepresentations and omissions in the 2015 Proxy were material to Company shareholders in voting on each of these proxies.

119. As a proximate result of Defendants' material misrepresentations and omissions in the 2015 Proxy, the Company was damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. Against Defendants in favor of the Company for the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties, gross mismanagement, and unjust enrichment;

B. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorney's fees, accountants' and experts' fees, costs, and expenses; and

C. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: January 24, 2017

THE WAGNER FIRM

By: *s/ Avi Wagner*

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VERIFICATION

I, MELVYN KLEIN, declare that I have reviewed the Verified Shareholder Derivative Complaint ("Complaint") prepared on behalf of Opus Bank and authorize its filing. I have reviewed the allegations made in the Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason believe them to be true. I further declare that I am a current holder, and have been a holder, of Opus Bank common stock at all relevant times.

Date: January 19, 2017

MELVYN KLEIN