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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

EDL

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 v.

19 JOHN M. CINDERREY,

20 Defendants.

CV Case No. 12 1519

COMPLAINT

21 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

22 **SUMMARY OF THE ACTION**

23 1. The Commission brings this action against a former executive at a now-failed San
24 Francisco bank who misled the company's independent auditors and created false books and
25 records relating to the bank's evaluation of loan risks. Defendant John Cinderey served as an
26 executive vice-president at United Commercial Bank, a subsidiary of publicly-traded bank
27 holding company UCBH Holdings, Inc. During the financial crisis and economic downturn in
28 late 2008, the defendant, acting at the direction of his superiors at the bank, misstated and

1 omitted material information in documents provided to the bank's independent auditors.

2 2. Cinderey's conduct was part of a larger effort by senior executives at the bank to
3 delay the impact of the economic downturn on the bank's publicly disclosed financial statements
4 and to hide problems with the bank's rapidly deteriorating loan portfolio. The Commission filed
5 a related action on October 11, 2011, charging four former officers of the bank and UCBH
6 Holdings with fraud and other violations for their efforts to hide the bank's loan losses.

7 JURISDICTION AND VENUE

8 3. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the
9 Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e)].

10 4. This Court has jurisdiction over this action pursuant to Section 27 of the
11 Exchange Act [15 U.S.C. § 78aa].

12 5. Defendant, directly or indirectly, made use of the means or instrumentalities of
13 interstate commerce, or of the mails, or of the facilities of a national securities exchange in
14 connection with the transactions, acts, practices and courses of business alleged herein.

15 6. Venue in this District is proper pursuant to Section 27 of the Exchange Act
16 [15 U.S.C. § 78aa] because a substantial part of the acts and transactions constituting the
17 violations alleged in this Complaint occurred within the Northern District of California, because
18 the relevant offer or sale of securities took place in the district, and because Defendant resides or
19 transacts business in the district.

20 INTRADISTRICT ASSIGNMENT

21 7. Under Civil Local Rule 3-2, this civil action should be assigned to the San
22 Francisco or Oakland Divisions, because a substantial part of the events or omissions which give
23 rise to the claims occurred in the City and County of San Francisco.

24 DEFENDANT

25 8. **John Cinderey**, age 64, is a resident of the Northern District of California.
26 Cinderey began working for United Commercial Bank in 2004, and from early 2008 to early
27 2009 headed the commercial banking division as an executive vice president of the bank.

1 **RELEVANT ENTITIES**

2 9. **UCBH Holdings, Inc.** (“UCBH”) was a Delaware corporation with a principal
3 place of business in San Francisco, California. UCBH subsidiary United Commercial Bank
4 accounted for substantially all of UCBH’s assets and revenue. During the relevant time period,
5 UCBH common stock was registered with the Commission pursuant to Section 12(b) of the
6 Exchange Act, and was listed on NASDAQ.

7 10. **United Commercial Bank** (“UCB”) was a California state-chartered commercial
8 bank and a wholly owned banking subsidiary of UCBH, and UCB’s financial statements were
9 consolidated into UCBH’s financial statements. UCB was regulated by the Federal Deposit
10 Insurance Corporation (“FDIC”) and the California Department of Financial Institutions.

11 **FACTUAL ALLEGATIONS**

12 **A. Background**

13 11. United Commercial Bank was a fast-growing bank based in San Francisco,
14 California with offices in six states. The bank was the primary operating subsidiary of UCBH,
15 and UCB accounted for substantially all of the assets and revenue of UCBH. The bank and
16 holding company reported assets of more than \$13 billion at the end of 2008, including loan
17 assets of \$8.6 billion.

18 12. Beginning in 2008, the economic downturn and declining real estate market
19 caused increasing loan delinquencies and decreasing collateral values for the loans in UCB’s
20 portfolio of commercial and construction loans. During the last half of 2008, overdue loans and
21 loans in default increased, and the bank’s capital ratios were deteriorating. To maintain
22 sufficient capital, in October 2008 the bank requested and received \$298 million from the U.S.
23 Department of the Treasury’s Trouble Asset Relief Program (“TARP”) in exchange for preferred
24 stock and stock warrants.

25 13. On March 16, 2009, UCBH filed its 2008 Form 10-K with the Commission,
26 disclosing its financial statements for the year ended December 31, 2008. The California
27 Department of Financial Institutions closed the bank and appointed the Federal Deposit
28 Insurance Corporation (“FDIC”) as the receiver for the bank on November 6, 2009. On

1 November 24, 2009, UCBH filed for bankruptcy protection under Chapter Seven of the federal
2 bankruptcy code.

3 **B. Loan Risk Ratings and Accounting for Loan Losses**

4 14. The UCBH annual report filed with the Commission on March 16, 2009, stated
5 that the company's financial statements were prepared in accordance with Generally Accepted
6 Accounting Principles ("GAAP"). GAAP states that a loan is impaired when "it is probable a
7 creditor will be unable to collect all amounts due according to the contractual terms of the loan
8 agreement." If a loan is impaired, the bank must determine the measure of impairment and
9 record this amount in an "allowance for credit losses."

10 15. GAAP required UCBH to assess probable losses inherent in its loan portfolio as
11 of the year-end and to record these probable losses in its Allowance for Loan and Lease Losses
12 ("ALLL"). Any increase in ALLL, a balance sheet item, would have had to be accompanied by
13 the recording of a provision for loan losses, an income statement line item, thereby decreasing
14 reported income. UCB policies and internal accounting controls required the bank to determine
15 whether loans are impaired, and require the bank to determine the value of loans considered
16 impaired, including a calculation of any loan loss reserves for impaired loans.

17 16. In order to comply with GAAP requirements to record potential loan losses in the
18 ALLL, the bank established a set of internal accounting controls and bank policies used to assess
19 the risks associated with loans. This policy required the bank and its employees to assign risk
20 ratings to loans, using number from 1 to 12, with a rating of 12 posing the highest risk of loss.
21 Loans rated 10 or higher were considered impaired, and would require a specific reserve in the
22 ALLL for the potential loss.

23 17. Downgrading the risk rating of a loan in some instances could require the bank to
24 record expenses against income, either as additional loan loss reserves in the ALLL or by the
25 reversal of interest income the bank had recorded on the loan. Efforts to delay risk rating
26 downgrades, and efforts to incorrectly maintain a risk rating that was too low or inaccurate,
27 circumvented the internal accounting controls at the bank meant to ensure loan risks and
28 potential losses were accurately assessed.

1 18. The independent public auditors evaluated the accuracy of the reported financial
2 statements filed by UCBH Holdings, including evaluating the accuracy of the risk ratings applied
3 to the bank's loan portfolio. The auditors relied on the bank and its management to provide
4 accurate and truthful information about the loans, potential loan losses, and other aspects of the
5 financial statements.

6 **C. Cinderrey's Role in Delaying Risk Rating Downgrades**

7 19. From early 2008 until early 2009, Cinderrey was in charge of the commercial
8 banking division of UCB, a position that reported to the Chief Credit Officer of the bank.

9 20. During the audit of the 2008 financial statements conducted by the bank's
10 independent outside auditor, Cinderrey was responsible for responding to a number of requests
11 from the auditors for additional information regarding risk ratings and collateral valuations for
12 certain large commercial and construction loans. In January 2009, the auditors requested written
13 memoranda regarding certain loans, and Cinderrey asked loan officers to draft memoranda
14 describing the current status of the loans, the borrowers' ability to repay, and other factors
15 affecting the risk ratings. Cinderrey reviewed and approved these memoranda, and in some cases
16 edited the written materials before they were forwarded to the auditors.

17 21. The defendant altered memoranda addressing the risks associated with certain
18 large loans and the potential losses the bank faced from the loans, and the auditors relied on the
19 information provided by the defendant and other senior officers at the bank during the audit.

20 22. One instance in which incomplete or misleading information was provided to the
21 outside auditors involved a construction loan for a residential and retail project that had stalled in
22 2008. The auditors asked for a memorandum regarding the risk rating for the loan. After
23 discussions with his supervisors, Cinderrey altered the memorandum to omit certain information
24 and added misleading statements regarding the borrowers.

25 23. Another instance of incomplete or misleading information provided to the
26 auditors involved a memorandum drafted to support the risk rating for a UCB loan to developers
27 building a large block of condominiums. The independent auditors requested information
28 regarding the risk rating for the loan. Cinderrey reviewed and edited a memorandum drafted by

1 the loan officer that included misleading information regarding the borrowers, and omitted any
2 mention of a recent appraisal reflecting a significant decrease in the value of the loan collateral.

3 24. In these and other instances, Cinderey circumvented the bank's internal
4 accounting controls by taking steps to prevent loans from receiving appropriate and accurate risk
5 ratings. In some cases downgraded risk ratings could trigger additional loan loss reserve
6 amounts or other losses for the bank. These inaccurate risk ratings also prevented the outside
7 independent auditors from scrutinizing certain problem loans.

8 25. By the acts and omissions described, Cinderey knowingly circumvented a system
9 of internal accounting controls, namely the controls designed to accurately assess loan risks and
10 potential losses. Cinderey's preparation of misleading memoranda and internal risk rating
11 documents constituted false books, records, and accounts maintained by UCB and UCBH. By
12 omitting and misstating information, Cinderey made materially false statements or omitted
13 material information to the bank's independent auditors.

14 **FIRST CLAIM FOR RELIEF**

15 **Aiding and Abetting Violations of Exchange Act Section 13(b)(2)(A)**

16 26. Paragraphs 1 through 73 are re-alleged and incorporated herein by reference.

17 27. Based on the conduct alleged above, UCBH violated Section 13(b)(2)(A) of the
18 Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered
19 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records,
20 and accounts which, in reasonable detail, accurately and fairly reflect the transactions and
21 dispositions of the assets of the issuer.

22 28. By engaging in the acts and conduct alleged above, defendant knowingly
23 provided substantial assistance to UCBH's failure to make and keep books, records, and
24 accounts which, in reasonable detail, accurately and fairly reflect its transactions and dispositions
25 of its assets.

26 29. By reason of the foregoing, defendant aided and abetted violations of Section
27 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], and unless restrained and
28 enjoined, will continue to aid and abet such violations.

1 enjoined, will continue to violate Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

2 **PRAYER FOR RELIEF**

3 WHEREFORE, the Commission respectfully requests that this Court:

4 **I.**

5 Permanently enjoin defendant from directly or indirectly violating the applicable
6 provisions and rules of the Federal securities laws as alleged and asserted above.

7 **II.**

8 Order defendant to pay civil penalties, if appropriate, pursuant to Section 21(d) of the
9 Exchange Act [15 U.S.C. § 78u(d)].

10 **III.**

11 Retain jurisdiction of this action in accordance with the principles of equity and the
12 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
13 decrees that may be entered, or to entertain any suitable application or motion for additional
14 relief within the jurisdiction of this Court.

15 **IV.**

16 Grant such other and further relief as this Court may determine to be just and necessary.

17
18 Dated: March 27, 2012

Respectfully submitted,

19
20 

21 **LOYD FARNHAM**

Attorney for Plaintiff

22 **SECURITIES AND EXCHANGE COMMISSION**