IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: **REPUBLIC FIRST BANCORP, INC.** **Debtor.**	**Chapter 11** **Case No.: 24-12991-amc**

RESPONDENT INTERESTED PARTIES' ANSWERS AND OBJECTIONS TO THE MOTION FOR AN ORDER APPROVING THE SETTLEMENT BY AND BETWEEN THE DEBTOR AND THE FEDERAL DEPOSIT INSURANCE COMPANY, IN ITS CAPACITY AS THE RECEIVER FOR REPUBLIC FIRST BANK

Respondent Interested Parties George E. Norcross, III, Gregory B. Braca, and Philip A. Norcross, ("Respondents"), by and through their counsel, Lamb McErlane PC, answer and object to the motion for approval of the settlement between Republic First Bancorp, Inc., ("Debtor"), and the Federal Deposit Insurance Company ("FDIC-R"), for the following reasons:

PERTINENT BACKGROUND

Respondents are plaintiffs in a derivative action against Andrew B. Cohen, Harry Madonna, Lisa Jacobs, Harris Wildstein, Benjamin C. Duster, IV, and Peter Bartholow, former Board of Directors of Debtor, captioned *George E. Norcross, III v. Harry Madonna*, Case No. 230600244, Phila. Cty., Pa ("State Action"). The State Action asserts claims against these former Board members for breaches of their fiduciary duties, unjust enrichment, waste and other bad acts and violations of law. **Ex. A** ("State Action Complaint").

The State Action contends that the Debtor's Chairman, Andrew B. Cohen, engaged in self-dealing, trying to capture majority control of the Debtor's wholly owned subsidiary bank by offering to purchase additional shares and making capital available. The other defendant members of the Debtor's Board, including Madonna, wrongfully enriched themselves through stock, grants,

options, retirement, benefits, etc., during the tenure of Chairman Cohen. However, after securing the Debtor's Board's approval to proceed by such means, Chairman Cohen instead backed out of the deal, a repudiation which was widely publicly reported and caused the bank's stock value to drop precipitously. The bank did not recover from this setback.

The State Action further accuses the defendant Board members, including Cohen and Madonna, of failing to properly supervise the Debtor's and its wholly owned subsidiary bank's operations, risk management, and compliance efforts. Consequently, the subsidiary bank was unable to meet reporting deadlines particularly when auditors refused to sign off on financial accounts, signaling doubts about the bank's financial records which stemmed from internal control weaknesses. Infighting among the Board also contributed to the bank's downfall and curtailed the bank's ability to quickly respond to or act on emerging crises and situations. The Debtor's and the bank's reputations suffered, and investors lost confidence.

Aware of the incompetent running of the Debtor and bank by the members of the Debtor Board sued in the State Action, including Cohen and Madonna, the FDIC did nothing. During the year and one-half the egregious wrongdoing and self-dealing outlined in the State Action leading to the bank's seizure were occurring, the FDIC still did nothing. To date, the FDIC has done nothing to bring the perpetrators of these shenanigans to justice or to make them account financially for the harm they have caused to the bank, the shareholder, and the public. To date, the bank, shareholders, and public have suffered losses of approximately $1 billion while the FDIC has done nothing.

The State Action contends that the misdeeds by the sued former Board members cost the Debtor's shareholders over $400 million dollars in equity value, as well as the loss of numerous jobs, the stiffing of several innocent vendors, and the loss of hundreds of millions of dollars to the

public. Crippled and beleaguered by the avarice, the sheer selfishness, and incompetence of these former Board members of Debtor, Republic First Bank, the wholly owned subsidiary of Debtor, failed in 2024 and became this Country's sixth-largest failed bank by total assets since 2010. The State Action seeks to hold these former Board members, including Cohen and Madonna, fully accountable for their misdeeds, directly or through applicable insurance coverage, for the benefit of the Debtor. The defendant former Board members have considerable wealth on a consolidated basis to pay the Debtor for the hundreds of millions of dollars in damages for which they are responsible. Presently, the State Action is stayed due to Debtor's voluntary Chapter 11 filing on August 27, 2024.

OBJECTIONS

Debtor's subject motion seeks court approval to enter into a settlement with FDIC-R. Respectfully, Respondents believe the proposed Settlement Agreement lacks necessary clarity for the parties, and the Court, to determine whether the settlement is reasonable and in the best interest of the Debtor per *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 424-25 (1968); *In re Marvel Enter. Group, Inc*., B.R. 243, 249 (D. Del. 1998). Initially, the Motion and Settlement Agreement fail to specify (a) the probability of success of any litigation against GASIC, an insurer, or (b) the complexity, expense and likely duration of such litigation, per *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc.* Additionally, it remains unclear to what, if any, extent the terms and conditions of the Settlement Agreement impact the State Action and whether any component of the proposed settlement could have the unintended consequences of diluting the merit of the meritorious claims in the State Action. Furthermore, Respondents respectfully believe other material information is omitted from the Debtor's filing which is critical to this Court's assessment of the reasonableness of the

proposed arrangement. Consequently, the Respondents object to Debtor's motion on the following grounds:

(a) The Motion and Settlement Agreement fail to specify that the State Action is excluded from the agreement and instead vaguely refers to "lawsuits" brought against the Debtor and/or its officers and directors (the "Bank Paid Legal Fees")" without adequate specificity;

(b) The Motion and Settlement Agreement fail to specify that the defendant Board members in the State Action will neither be, nor receive the benefit of, a release should this Court approve the Settlement Agreement and the claim against GASIC succeed;

(c) The Motion and Settlement Agreement fail to sufficiently specify and delineate the amount of the "Unreimbursed Advances" reasonably expected to be covered and reimbursed by GASIC, thereby depriving this Court of information necessary to access the reasonableness of terms and conditions of the proposed settlement agreement. Because the amount of "Unreimbursed Advances" is not specified (or is unclear) in the Motion and Settlement Agreement, this Court cannot reasonably determine whether the $250,000 set-aside is most propitiously used to proceed against GASIC per the Settlement Agreement or to reduce the total amount of the "Unreimbursed Advances" owed by Debtor to FDIC-R. Separately, the Settlement Agreement does not address why the $250,000 set-aside would not be more propitiously used to pursue the prosecution of the State Action from which the Debtor could receive hundreds of millions of dollars in damages; a sum sufficient to pay whatever is the amount of the "Unreimbursed Advances" and Debtor's other obligations. Along the same lines, respectfully, the FDIC should be compelled by this Court to proceed with the prosecution of the State Action against the defendant former Board members, including Cohen and Madonna, or, alternatively, the Plaintiffs directed to continue with the prosecution of the State Action on the Debtor's behalf,

(d) As noted, the Motion and Settlement Agreement fail to address the probability of success of any litigation against GASIC, or the expected complexity, expense and likely duration of such litigation per the applicable case law;

(e) The Motion and Settlement Agreement fail to assure with certainty that the approval of the Settlement Agreement by this Court will not impact in any way the full recovery sought in the State Action (or any action brought on behalf of the Debtor and for its benefit); and,

(f) The Motion and Settlement Agreement do not detail the FDIC's findings about wrongdoing at the subsidiary bank, or its future plans to seek recovery from certain of the Debtor's former Directors and officers – information the public has a right to know.

Unless and until these (and other) deficits are fully addressed, Respondents respectfully submit that this Honorable Court should not approve the proposed Settlement Agreement.

As to the representations in the paragraphs of Debtor's motion, Respondents answer as follows:

1.-3. Denied. The representations in the corresponding paragraphs of Debtor's Motion constitute conclusions of law to which no responses are required and are therefore deemed denied.

4. Admitted in part; denied in part. It is only admitted that Debtor voluntarily filed for Chapter 11 bankruptcy on August 27, 2024. The remaining representations in the corresponding paragraph of Debtor's Motion are denied and strict proof thereof demanded.

5.-6. Denied as stated. As contended in the State Action (*see* **Ex. A**, State Action Complaint), and discussed above, the named defendant Board members engaged in unprecedented breaches of fiduciary duties and other misconduct, including self-dealing, entrenchment into management, refusal to consider transactions in the best interests of Debtor to protect their own self-interests, issuing false and misleading press statements, withholding critical information from

shareholders, and egregiously mismanaging the Debtor, resulting in catastrophic waste of corporate assets. The Debtor's bankruptcy filing is directly due to the outrageous malfeasance by these Board members.

7. Admitted in part; denied in part. It is only admitted that Debtor is currently in receivership with the FDIC-R acting as Receiver. The remaining representations in the corresponding paragraph of Debtor's Motion are denied and strict proof thereof demanded.

8.-10. After reasonable investigation, Respondents are unable to determine the truthfulness of the representations in the corresponding paragraphs of the Debtor's Motion and therefore these representations are denied. By way of further response, Respondents' ability to answer the representations in the corresponding paragraphs of the Motion is precluded due to the ambiguous nature of its allegations and the failure by Debtor to identify in detail the "Unreimbursed Advances" referenced therein.

11. Denied. The Settlement Agreement attached as Exhibit A to the Debtor's Motion is a document which speaks for itself and therefore any inconsistency between the Settlement Agreement and the representations in the corresponding paragraph of the Debtor's Motion are denied.

12.-17. Denied. The representations in the corresponding paragraphs of Debtor's Motion constitute conclusions of law to which no responses are required and are therefore deemed denied.

18. Admitted in part; denied in part. Notice of the Debtor's Motion was only given to Respondent Philip A. Norcross. Respondent interested parties George E. Norcross, III, and Gregory B. Braca have yet to be served with the Debtor's Motion.

NOTICE

19. Notice of this Answer and Objections has been given to: (i) The United States

Trustee, (ii) the FDIC-R, (iii) all parties in interest having requested notice pursuant to Rule 2002 as of the date hereof, and (iv) all other creditors. In light of the relief requested herein, Respondents respectfully submit that no other or further notice need be given.

WHEREFORE, Respondents respectfully request that this Honorable Court deny the subject Motion by entering an order in the form attached hereto as **Ex. B**.

Date: August 28, 2025

LAMB McERLANE PC

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