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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR BUTTE COMMUNITY BANK,

Plaintiffs,

v.

ROBERT CHING, EUGENE EVEN, DONALD LEFORCE, ELLIS MATTHEWS, LUTHER McLAUGHLIN, ROBERT MORGAN, JAMES RICKARDS, GARY STRAUSS, HUBERT TOWNSHEND, JOHN COGER AND KEITH ROBBINS,

Defendants.

No. 2:13-cv-01710-KJM-EFB

ORDER


On December 29, 2014, defendants Robert Ching, Eugene Even, Donald Leforce, Ellis Matthews, Luther McLaughlin, Robert Morgan, James Rickards, Gary Strauss, Hubert Townsend, John Coger, and Keith Robbins moved for summary judgment against the Federal Deposit Insurance Corporation (FDIC), acting as receiver for Butte Community Bank. Defs.’ Mot. Summ. J. (Mot), ECF No. 45. The FDIC opposed the motion on February 16, 2015, ECF No. 58, and the defendants submitted a reply brief on March 6, 2015, ECF No. 66. The court previously has submitted the matter on the briefing. Minute Order, ECF No. 70.

1 Having considered the briefing, the court provides an opportunity for supplemental
2 briefing as follows: Without the court’s prejudging the resolution of the pending motion for
3 summary judgment, the FDIC may assume for sake of argument that California Corporations
4 Code section 309 and 12 U.S.C. § 1821(k) apply to its complaint, rather than the statutes referred
5 to in the defendants’ motion as the “bank dividend statutes.” *See* Mot. 1:9–10. The FDIC may
6 cite and interpret any controlling or persuasive authority to show it has standing under
7 Corporations Code section 309 and 12 U.S.C. § 1821(k) to allege the directors’ negligence, gross
8 negligence, and breach of fiduciary duties “as the result of a May 2008 dividend,” Compl. ¶ 4,
9 ECF No. 1, in the circumstances alleged here, including Community Valley Bancorp’s approval
10 of the distribution, *id.* ¶¶ 5–16, 30–38.

11 The FDIC shall, within 14 days, file any supplemental briefing as allowed above.
12 Thereafter, defendants shall have 7 days to file a supplemental reply addressing any arguments in
13 the FDIC’s supplemental briefing. The supplemental briefing and supplemental reply shall not
14 exceed ten pages each.

15 IT IS SO ORDERED.

16 DATED: March 13, 2015.

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UNITED STATES DISTRICT JUDGE