

1 DANIEL J. TYUKODY (SBN 123323)
dtjukody@goodwinprocter.com
2 TEODORA E. MANOLOVA (SBN 233333)
tmanolova@goodwinprocter.com
3 JASON L. KRAJCKER (SBN 234235)
jkrajcer@goodwinprocter.com
4 **GOODWIN PROCTER LLP**
601 South Figueroa Street, 41st Floor
5 Los Angeles, CA 90017
Tel.: 213.426.2500
6 Fax: 213.623.1673

7 DIANA JESSUP LEE (SBN 155131)
dlee@rppmh.com
8 **REICKER, PFAU, PYLE & MCROY LLP**
1421 State Street, Suite B
9 Santa Barbara, CA 931010
Tel: 805.966.2440
10 Fax: 805.957.4215

11 Attorneys for Defendants
George S. Leis, Stephen V. Masterson, David Porter,
12 D. Vernon Horton, Richard S. Hambleton, Jr., Robert W.
Kummer, Jr., John R. Mackall, Roger C. Knopf,
13 Richard A. Nightingale, Edward E. Birch,
Clayton C. Larson, and Kathy J. Odell
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SANTA BARBARA**

18 In Re PACIFIC CAPITAL BANCORP
DERIVATIVE LITIGATION

Santa Barbara Superior Court
Lead Case No. 1340306

(Consolidated with Case No. 1340825)

20 This Document Relates To:

21 *Clem v. Leis, et al.*, Case No. 1340306

22 *Monty v. Leis, et al.*, Case No. 1340825

**NOTICE OF PENDENCY AND
PROPOSED SETTLEMENT**

Judge: Hon. Denise de Bellefeuille
Dept: SB6
Date Action Filed: October 29, 2009

27 NOTICE OF PENDENCY AND PROPOSED SETTLEMENT
28 LEAD CASE NO. 1340306

1 **TO: ALL OWNERS OF PACIFIC CAPITAL BANCORP (“PCB”) SECURITIES AT**
2 **ANY TIME BETWEEN APRIL 28, 2010, AND AUGUST 31, 2010, INCLUSIVE**
3 **(“SETTLEMENT CLASS”)**

4 **PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS**
5 **MAY BE AFFECTED.**

6 This notice has been published pursuant to an Order of the Superior Court for the State of
7 California, County of Santa Barbara (the “Court”). The purpose of the notice is to advise you of the
8 proposed settlement (the “Settlement”) of the consolidated shareholder litigation pending before the
9 Court (the “Action”) and the Settlement Hearing. The terms of the Settlement are summarized in
10 this Notice and fully set forth in the Stipulation of Settlement dated as of November 15, 2011 (the
11 “Stipulation”). The Settlement will fully resolve the Action upon entry of Judgment by the Court
12 and dismiss the Action with prejudice. For a more detailed statement of the matters involved in the
13 Action, the Settlement, and the terms discussed in this Notice, the Stipulation may be inspected at
14 the Office of the Clerk of the Superior Court for the County of Santa Barbara located at 1100
15 Anacapa Street, Santa Barbara, CA, during regular business hours of each business day. In addition
16 the Stipulation may be viewed on the website of Chapin Fitzgerald Sullivan & Bottini LLP at
17 www.cfsblaw.com.

18 If you are a Settlement Class Member, you have the right to opt out and exclude yourself
19 from the Settlement. If you fail to opt out in the manner provided herein at least thirteen (13)
20 calendar days prior to the Settlement Hearing, you will be deemed to have waived your right to opt
21 out and will be bound by the Judgment to be entered and the releases to be given, unless otherwise
22 ordered by the Court.

23 If you are a Settlement Class Member, you have the right to object to the Settlement, the
24 attorneys’ fees and expenses to Plaintiffs’ Counsel, and any incentive awards to the named class
25 Plaintiffs in the manner provided herein. If you fail to object in the manner provided herein at least
26 thirteen (13) calendar days prior to the Settlement Hearing, you will be deemed to have waived
27 your objections and will be bound by the Judgment to be entered and the releases to be given,
28 unless otherwise ordered by the Court.

1 This Notice is not intended to be an expression of any opinion by the Court with respect to
2 the merits of the claims made in the Action, but is merely to advise you of the pendency and
3 settlement of the Action.

4 **I. DEFINITIONS USED IN THIS NOTICE**

5 1. “Action” means the consolidated action styled *In re Pacific Capital Bancorp Deriv.*
6 *Litig.*, Lead Case No. No. 1340306 (Santa Barbara Superior Court).

7 2. “Court” means the Superior Court of the State of California, County of Santa
8 Barbara.

9 3. “Defendants” means, collectively, nominal defendant PCB, the Individual
10 Defendants, and former defendant Ford.

11 4. “Defendants’ Counsel” means, collectively, Goodwin|Procter LLP, Skadden Arps
12 Slate Meagher & Flom LLP, and any predecessors or successors to said counsel.

13 5. “Effective Date” means the first date by which all of the events and conditions
14 specified in ¶5.1 of the Stipulation have been met and have occurred.

15 6. “Final” means the time when the Judgment has been entered, has not been
16 reversed, vacated, or modified in any way, and is no longer subject to appellate review, either
17 because of disposition on appeal and conclusion of the appellate process or because of passage,
18 without action, of time for seeking appellate review. More specifically it is that situation when: (1)
19 either no appeal has been filed and the time has passed for any notice of appeal to be timely filed in
20 the Action; or (2) an appeal has been filed in the Action and the Court of Appeal has either affirmed
21 the Judgment or dismissed that appeal and the time for seeking reconsideration or further appellate
22 review has passed; or (3) a higher court in the Action has granted further appellate review and that
23 court has either affirmed the underlying Judgment or affirmed the Court of Appeal’s decision
24 affirming the Judgment or dismissing the appeal.

25 7. “Ford” means former defendants Gerald Ford and Ford Financial Fund, L.P.

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1 the Settlement Class are Ford, the Individual Defendants, the officers and directors of PCB, and
2 members of Defendants' immediate families and their legal representatives, heirs, executors,
3 administrators, successors, assigns and transferees,

4 19. "Settling Parties" means, collectively, each and all of the Individual Defendants,
5 Ford, nominal defendant PCB, and Plaintiffs, on behalf of themselves and the Settlement Class, and
6 derivatively on behalf of PCB.

7 20. "Unknown Claims", means any and all claims and potential claims against
8 Defendants which Plaintiffs or any Settlement Class Member does not know or suspect to exist in
9 his, her or its favor as of the Effective Date, and any claims against Plaintiffs which Defendants do
10 not know or suspect to exist in their favor, which if known by him, her or it might have affected his,
11 her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims
12 (including Unknown Claims), the Parties stipulate and agree that by operation of the Order and
13 Final Judgment, upon the Effective Date, the Plaintiffs and Defendants shall have expressly waived,
14 and each Class Member shall be deemed to have waived, and by operation of the Final Judgment
15 shall have expressly waived, the provisions, rights and benefits of Cal. Civ. Code §1542, which
16 provides:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
18 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
19 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
20 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
21 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
22 **HER SETTLEMENT WITH THE DEBTOR.**

23 and any and all provisions, rights and benefits conferred by any law of any state or territory of the
24 United States, or principle of common law, or international law, which is similar, comparable, or
25 equivalent to Cal. Civ. Code § 1542. Plaintiffs and Settlement Class Members may hereafter
26 discover facts in addition to or different from those which he, she, or it now knows or believes to be
27 true with respect to the subject matter of the Released Claims, but the Plaintiffs shall expressly
28 fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective

1 Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully,
2 finally, and forever settled and released, any and all Released Claims, known or unknown,
3 suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which
4 now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into
5 existence in the future, including, but not limited to, conduct which is negligent, intentional, with or
6 without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or
7 existence of such different or additional facts. Plaintiffs and Defendants acknowledge, and
8 Settlement Class Members shall be deemed to have acknowledged, that the inclusion of “Unknown
9 Claims” in the definition of Released was separately bargained for and was a key element of the
10 Settlement.

11 **II. THE ACTION**

12 Plaintiffs sue on behalf of themselves and the Settlement Class, and derivatively on behalf
13 of PCB, and assert claims for breach of fiduciary duty, unjust enrichment, waste, and injunctive
14 relief. Plaintiffs generally allege that the Individual Defendants breached their fiduciary duties to
15 PCB by making and/or allowing the dissemination of allegedly false and misleading public
16 statements concerning PCB’s loan loss reserves, PCB’s negotiations with its federal regulators and
17 entry into Memoranda of Understanding regarding expanded net capital requirements, PCB’s sale
18 of a business unit devoted to short term loans and other services in connection with tax refunds, and
19 PCB’s financial condition generally. Plaintiffs also assert claims on behalf of the Settlement Class
20 for injunctive relief and breach of fiduciary duty on the basis of a recapitalization transaction with
21 Ford Financial Fund, L.P. (“Ford Transaction”).

22 **III. DEFENDANTS’ DENIALS OF WRONGDOING**

23 Defendants have denied and continue to deny each and all of the claims and contentions
24 alleged in the Action. Each Individual Defendant, PCB, and Ford have expressly denied and
25 continue to deny all charges of wrongdoing or liability against each of them arising out of any
26 conduct, statements, acts or omissions alleged, or that could have been alleged in the Action. In
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1 fair, reasonable, and adequate, and should be finally approved by the Court; (ii) whether the Action
2 should be dismissed with prejudice; (iii) whether this Action satisfies the applicable prerequisites
3 for class action treatment under California Code of Civil Procedure § 382; (iv) whether the Fee and
4 Expense Amount should be approved; (v) whether Incentive Awards should be awarded to the
5 named Plaintiffs; (vi) whether an order should be entered barring and enjoining the Plaintiffs and all
6 members of the Settlement Class from instituting, commencing, maintaining or prosecuting, either
7 directly or indirectly, or in a representative capacity, any action in any court or tribunal asserting
8 any Released Claims against any Released Persons; and (vii) to rule upon such other matters as the
9 Court may deem appropriate. The Settlement Hearing may be continued by the Court at the
10 Settlement Hearing or at any adjourned session thereof without further notice.

11 **VI. THE SETTLEMENT**

12 The terms and conditions of the proposed Settlement are set forth in the Stipulation
13 described above. The Stipulation has been filed with the Court and is also available for viewing on
14 the website of Chapin Fitzgerald Sullivan & Bottini LLP at <http://www.cfsblaw.com>. The
15 following is only a summary of its terms.

16 PCB has agreed to implement and/or maintain for a period of three (3) years an array of
17 substantive corporate governance reforms that will enhance PCB's internal controls and corporate
18 governance policies. For example, PCB has agreed to, or already accomplished the following
19 items: (i) create the position of a chief risk officer; (ii) revamp its credit policies; (iii) install a new
20 credit team, including replacement of chief appraisal officer; (iv) amend its audit committee
21 charter; (v) amend its compensation committee charter; and (vi) institute an annual review of its
22 board committee charters.

23 PCB acknowledges that the instigation, prosecution, litigation, and settlement of the Action
24 were substantial and contributing factors in causing the Company to adopt or agree to implement
25 the corporate governance measures summarized above and fully set forth in Exhibit A to the
26 Stipulation.

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1 Settlement Class Members will not receive any cash payment under the Settlement. During
2 litigation of the Action, Plaintiff sought monetary damages for the Settlement Class and an
3 injunction requiring PCB to allow its shareholders to vote on the Ford Transaction. The trial court
4 denied Plaintiff's motion for a preliminary injunction by order dated June 21, 2010. Plaintiff
5 appealed, and on March 30, 2011 the Court of Appeal affirmed the trial court. Plaintiff's petition
6 for rehearing was denied, as was a petition for certiorari to the California Supreme Court by order
7 dated June 15, 2011. As a result, the viability of the direct claims for damages was severely
8 undermined.

9 **VII. DISMISSAL AND RELEASES**

10 In connection with the Court's approval of the Settlement, Plaintiffs seek a dismissal with
11 prejudice of all claims asserted by Plaintiffs and the Settlement Class against the Defendants in the
12 Action.

13 Upon the Effective Date, PCB, Plaintiffs, on behalf of themselves and the Settlement Class,
14 and derivatively on behalf of PCB, and Plaintiffs' Counsel shall be deemed to have, and by
15 operation of the Judgment shall have, fully, finally and forever released, relinquished and
16 discharged the Released Claims (including Unknown Claims) against the Released Persons and any
17 and all claims arising out of, relating to, or in connection with the defense, settlement, or resolution
18 of the Action against the Released Persons. Nothing herein shall in any way impair or restrict the
19 rights of any Settling Party to enforce the terms of the Stipulation.

20 Upon the Effective Date, each of the Released Persons shall be deemed to have, and by
21 operation of the Judgment shall have, fully, finally and forever released, relinquished and
22 discharged Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims), arising
23 out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or
24 resolution of the Action or the Released Claims. Nothing herein shall in any way impair or restrict
25 the rights of any Settling Party to enforce the terms of the Stipulation.

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1 Class in a timely and proper manner. A Settlement Class Member wishing to make such request,
2 shall, *at least thirteen (13) calendar days prior to the Settlement Hearing*, mail a request for
3 exclusion in written form by first class mail. A request for exclusion (1) must clearly specify that
4 the shareholder wishes to be excluded from the Settlement Class, and include (a) the shareholder's
5 name, address and telephone number; and (b) proof of ownership of PCB securities at any time
6 between April 28, 2010 and August 31, 2010, inclusive, including the number of shares of PCB
7 securities owned and the date of purchases; and (2) must be postmarked no later than January 6,
8 2012 and sent to each of the following:

9
10 CHAPIN FITZGERALD SULLIVAN
& BOTTINI LLP
11 Francis A. Bottini, Jr.
550 West C Street, Suite 3200
12 San Diego, CA 92101
T: 619-241-4810
F: 619-955-5318

13
14 *Lead Counsel for Lead Plaintiff Monty*

GOODWIN PROCTER LLP
Danie J. Tyukody
601 South Figueroa Street, 41st Floor
Los Angeles, CA 90017
T: 213-426-2500
F: 213-623-1673

*Counsel for Individual Defendants
George S. Leis, Stephen V. Masterson,
David Porter, D. Vernon Horton,
Richard S. Hambleton, Jr., Robert W.
Kummer, Jr., John R. Mackall, Roger
C. Knopf, Richard A. Nightingale,
Edward E. Birch, Clayton C. Larson,
and Kathy J. Odell*

18 PACIFIC CAPITAL BANCORP
Christine Sontag
19 1021 Anacapa Street, Third Fl
Santa Barbara, CA 93101
20 T: 805-564-6405
F: 805-899-8401

21
22 *Counsel for Pacific Capital Bancorp*

23 SKADDEN, ARPS, SLATE,
MEAGHER & FLOM, LLP
24 Eric Waxman
300 South Grand Avenue, Suite 3400
25 Los Angeles, CA 90071
T: 213-687-5000
26 F: 213-687-5600

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3 Any Settlement Class Member who does not make his, her, or its exclusion from the
4 Settlement Class in the manner provided herein shall be deemed bound by the Settlement, the
5 Judgment to be entered and the releases to be given.

6 **X. THE RIGHT TO OBJECT AND/OR BE HEARD AT THE HEARING**

7 Any Settlement Class Member may object and/or appear and show cause, if he, she, or it has
8 any concern, why the Settlement of the Action should not be approved as fair, reasonable, and
9 adequate, or why a judgment should not be entered thereon, or why the Fee and Expense Amount
10 and Incentive Awards should not be approved; provided, however, unless otherwise ordered by the
11 Court, no Settlement Class Member shall be heard or entitled to contest the approval of the terms
12 and conditions of the Settlement, or, if approved, the judgment to be entered thereon approving the
13 same, or the Fee and Expense Amount or Incentive Awards, unless that shareholder has, *at least*
14 *thirteen (13) calendar days prior to the Settlement Hearing*: (1) filed with the Clerk of the Court a
15 written objection to the Settlement setting forth: (a) the nature of the objection; (b) proof of
16 ownership of PCB securities at any time between April 28, 2010 and August 31, 2010, inclusive,
17 including the number of shares of PCB securities owned and the date of purchase; and (c) any
18 documentation in support of such objection; and (2) if a Settlement Class Member intends to appear
19 and requests to be heard at the Settlement Hearing, such shareholder must, in addition to the
20 requirements of (1) above, have filed with the Clerk of the Court: (a) a written notice of such
21 shareholder's intention to appear; (b) a statement that indicates the basis for such appearance; and
22 (c) a statement of the identities of any witnesses the shareholder intends to call at the Settlement
23 Hearing and the subject(s) of their testimonies. If a Settlement Class Member files a written
24 objection and/or written notice of intent to appear, such shareholder must also simultaneously serve
25 copies of such notice, proof, statement and documentation, together with copies of any other papers
26 or briefs such shareholder files with the Court (either by hand delivery or by first class mail) upon
27 each of the following:

1 Clerk of the Court
2 Superior Court of California
3 County of Santa Barbara
4 1100 Anacapa Street,
5 Santa Barbara, CA 93101-2099
6 T: (805) 882-4520

GOODWIN PROCTER LLP
Danie J. Tyukody
601 South Figueroa Street, 41st Floor
Los Angeles, CA 90017
T: 213-426-2500
F: 213-623-1673

5 CHAPIN FITZGERALD SULLIVAN
6 & BOTTINI LLP
7 Francis A. Bottini, Jr.
8 550 West C Street, Suite 3200
9 San Diego, CA 92101
10 T: 619-241-4810
11 F: 619-955-5318

Counsel for Individual Defendants
George S. Leis, Stephen V. Masterson,
David Porter, D. Vernon Horton,
Richard S. Hambleton, Jr., Robert W.
Kummer, Jr., John R. Mackall, Roger
C. Knopf, Richard A. Nightingale,
Edward E. Birch, Clayton C. Larson,
and Kathy J. Odell

Lead Counsel for Lead Plaintiff Monty

PACIFIC CAPITAL BANCORP
Christine Sontag
1021 Anacapa Street, Third Fl
Santa Barbara, CA 93101
T: 805-564-6405
F: 805-899-8401

Counsel for Pacific Capital Bancorp

15 SKADDEN, ARPS, SLATE,
16 MEAGHER & FLOM, LLP
17 Eric Waxman
18 300 South Grand Avenue, Suite 3400
19 Los Angeles, CA 90071
20 T: 213-687-5000
21 F: 213-687-5600

Counsel for Ford Financial Fund, L.P.
and Gerald Ford

21 Any Settlement Class Member who does not make his, her, or its objection in the manner
22 provided herein shall be deemed to have waived such objection and shall forever be foreclosed
23 from making any objection to the fairness, reasonableness, or adequacy of the Settlement as
24 incorporated in the Stipulation, to the Fee and Expense Amount, as well as the Incentive Awards,
25 unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered
26 and the releases to be given.

1 **X. CONDITIONS OF SETTLEMENT**

2 The Settlement is conditioned upon the occurrence of certain events described in the
3 Stipulation. Those events include the occurrence of the Effective Date, which requires, among
4 other things: (1) entry of the requested Judgment by the Court; and (2) expiration of the time to
5 appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described
6 in the Stipulation is not met and the Effective Date does not occur, the Stipulation might be
7 terminated and, if terminated, will become null and void, and the parties to the Stipulation will be
8 restored to their respective positions in the Action as of August 8, 2011.

9 **XI. EXAMINATION OF PAPERS AND INQUIRIES**

10 This notice contains only a summary of the terms of the Settlement. For a more detailed
11 statement of the matters involved in the Action, reference is made to the Stipulation which may be
12 inspected at the Office of the Clerk at the address below during business hours of each business
13 day. In addition the Stipulation may be viewed on the website of Chapin Fitzgerald Sullivan &
14 Bottini LLP at <http://www.cfsblaw.com>.

15 Clerk of the Court
16 Superior Court of California
17 County of Santa Barbara
18 1100 Anacapa Street,
19 Santa Barbara, CA 93101-2099
20 T: (805) 882-4520

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28 *Lead Counsel for Lead Plaintiff Monty*

PACIFIC CAPITAL BANCORP
Christine Sontag
1021 Anacapa Street, Third Fl
Santa Barbara, CA 93101
T: 805-564-6405
F: 805-899-8401

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Counsel for Pacific Capital Bancorp

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM, LLP
Eric Waxman
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071
T: 213-687-5000
F: 213-687-5600

*Counsel for Ford Financial Fund, L.P.
and Gerald Ford*

**PLEASE DO NOT TELEPHONE THE COURT OR PCB REGARDING
THIS NOTICE**