

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

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In the Matter of ) CONSENT ORDER,  
 ) ORDER FOR  
 ACHIEVE FINANCIAL SERVICES, LLC, as an ) RESTITUTION, AND  
 institution-affiliated party of ) ORDER TO PAY  
 FIRST CALIFORNIA BANK ) CIVIL MONEY PENALTY  
 WESTLAKE VILLAGE, CALIFORNIA )  
 ) FDIC-13-048b  
 ) FDIC-13-049k  
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(INSURED STATE NONMEMBER BANK) )  
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The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for Achieve Financial Services, LLC (“Achieve”), as an institution-affiliated party of First California Bank, Westlake Village, California (“Bank” or “FCB”), under section 3(q) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1813(q).

The FDIC has determined that Achieve has engaged in violations of law and regulation, including engaging in deceptive and unfair acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), in the marketing and promotion of the Achieve Card Prepaid MasterCard (“AchieveCard”) to consumers and in procedures for resolving disputed claims in violation of Section 5 and the Treasury Rule, 31 C.F.R. § 210, governing the use of the Automated Clearing House (“ACH”) system to deliver federal benefit payments to prepaid debit cards (“Treasury Rule”).

Achieve has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY

PENALTY (“CONSENT AGREEMENT”), dated April 29, 2013, that is accepted by the FDIC. With the CONSENT AGREEMENT, Achieve has consented, without admitting or denying any violations of law or regulation, to the issuance of this CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively “ORDER”) by the FDIC.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), have been satisfied, the FDIC hereby issues the following:

### **I. CONSENT ORDER**

IT IS HEREBY ORDERED that Achieve and its successors and assigns, cease and desist from engaging in violations of law and/or regulations, including operating in violation of Section 5 by engaging in the deceptive and unfair practices described herein.

IT IS FURTHER ORDERED that Achieve, and its successors and assigns, shall take the following affirmative action:

### **CORRECTIONS OF VIOLATIONS OF LAW**

1. Within 30 days of the effective date of this ORDER, Achieve shall correct the violations of law referenced above and implement procedures to prevent their recurrence. Specifically, Achieve shall:

(a) Cease all unfair and/or deceptive acts or practices in the advertising, marketing, offering, soliciting, extending, billing, or servicing of the AchieveCard, including but not limited to Achieve’s use of the word “free” if the AchieveCard has fees or costs associated with its use;

(b) Ensure that all AchieveCard error resolution procedures comply with Section 5 and the Treasury Rule; and

(c) Take all necessary steps to effect and maintain future compliance with Section 5 and the Treasury Rule.

#### **NO MISREPRESENTATIONS/OMISSIONS**

2. Achieve shall not make, or allow to be made, any misleading or deceptive representation, statement, or omission, expressly or by implication, in the marketing materials used to solicit any customer or prospective customer, or in any similar communication, in connection with the AchieveCard or any product or service that is or may be offered in conjunction with the Bank or any “insured depository institution,” as that term is defined in 12 U.S.C. § 1813(c)(2) (collectively “Products and/or Services”).

3. Within 60 days from the effective date of this ORDER, Achieve shall take all action necessary to comply with the guidance set forth in *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (FIL-26-2004, issued March 11, 2004) and shall not engage in any violations of Section 5 with respect to any Product or Service. Without limiting the generality of the foregoing, Achieve shall not make, and shall cause its service providers not to make, directly or indirectly, any misrepresentation, expressly or by implication, about any material term of an offer related to any Product or Service in connection with the advertising, marketing, offering, soliciting, extending, billing, or servicing of same, including but not limited to misrepresentations and/or omissions as to:

(a) Any and all fees and costs, including claims that Products and Services are free, bill-payment fees, the circumstances under which fees are charged for online bill payment

or payments made over the phone, and comparison of fees and costs for Products and Services to fees and costs for using a checking account or cash;

- (b) Overdraft fees and/or the availability of overdraft protection as a feature of the AchieveCard, including comparisons to overdraft fees associated with a bank account; or
- (c) Error resolution procedures and the steps a customer must take to resolve a disputed claim.

## **COMPLIANCE MANAGEMENT SYSTEM**

4. Within sixty (60) days from the effective date of this Order, Achieve shall review, revise, develop, and/or implement, as necessary, a sound risk-based compliance management system (“CMS”), including a comprehensive written compliance program (“Compliance Program”) to ensure that all Products and Services offered by Achieve comply with consumer protection and fair lending laws, including Section 5, implementing rules and regulations, and regulatory guidance and statements of policy (collectively “Consumer Protection Laws”). Without limiting the generality of the foregoing, Achieve’s Board of Managers (“Board”) shall take the following actions:

- (a) Hire a qualified compliance officer (“Compliance Officer”) who demonstrates the requisite knowledge and experience to administer an effective compliance program. The Board shall clearly define the Compliance Officer’s duties and responsibilities, and grant the Compliance Officer sufficient authority and independence to cross departmental lines, have access to all areas of the company’s operations, and effect corrective action. The Compliance Officer shall be provided with ongoing training, as well as sufficient time and adequate resources to perform the job functions. The Compliance Officer shall report directly to the Board and provide a monthly presentation regarding the Compliance Program, Achieve’s

compliance with Consumer Protection Laws, and compliance with this ORDER, which shall be documented in the Board's minutes;

(b) Include compliance matters in communications between the Board and company personnel to demonstrate clear and unequivocal expectations regarding compliance with Consumer Protection Laws and compliance with this ORDER; and

(c) Increase the resources dedicated to compliance with Consumer Protection Laws commensurate with the level and complexity of the company's operations. The Compliance Program shall be administered by sufficient personnel with experience, knowledge, and authority to comply with all the requirements of this ORDER.

5. Within 30 days from the effective date of this ORDER, Achieve shall retain an independent third party ("Compliance Program Consultant"), acceptable to the Regional Director, to assist in the development, revision, review, and implementation of Achieve's Compliance Program. The Compliance Program Consultant shall provide a detailed written report regarding adherence to the Compliance Program to the Board ("Compliance Program Report") on a monthly basis. The Board shall conduct a full and complete review of the Compliance Program Report within 30 days of receipt. This review shall be recorded in the Board minutes.

6. Within 60 days from the effective date of the ORDER, Achieve shall review, revise, develop, and/or implement its compliance policies and procedures to provide Achieve personnel with all the information needed to operate its business in compliance with Consumer Protection Laws. Achieve shall ensure the policies and procedures are not inconsistent with the policies and procedures of the Bank or any other insured depository institution.

7. Achieve shall ensure that the Compliance Program includes effective monitoring systems for any Product or Service, including:

- (a) Review and approval by Achieve and, as applicable, by the Bank or any other insured depository institutions of: (1) all marketing, advertising, and solicitation materials, including direct mail or internet solicitations, promotional materials, telemarketing scripts, and website content; (2) other materials provided to customers or potential customers generated in connection with the marketing, administration, and servicing of such Product or Service, including agreements, privacy policies, and statements; and (3) any material changes or amendments thereto; and maintenance of copies of the above-derived materials by Achieve;
- (b) Timely and regular notification by Achieve to, as applicable, the Bank or any other insured depository institution of any regulatory agency inquiries or legal actions and any legal actions commenced by any customer or potential customer;
- (c) Review and approval by Achieve and, as applicable, the Bank or other insured depository institutions of all materials related to policies and procedures concerning customer service, monitoring of customer service calls on a regular basis, and the review of service-level reports;
- (d) Monitoring by Achieve of the performance of marketing and solicitation programs;
- (e) Periodic compliance reviews, including on-site visits, as appropriate, by Achieve of partners, vendors, and servicers whose role is material to the Products or Services;
- (f) Maintenance of records by Achieve of all approved Product or Service materials, complaints and responses, customer solicitation materials, administrative materials, and service provider agreements;

(g) Maintenance of records by Achieve documenting its service-level standards and those for such services as are provided by partners, vendors, and servicers whose role is material to the Products and Services, including due diligence reports, monitoring and audit results, and financial materials;

(h) Regular, quarterly meetings between Achieve and, as applicable, the Bank or any other insured depository institution and Achieve's partners, vendors, and servicers whose role is material to the Products and Services provided by Achieve, for which written minutes will be taken and maintained; and

(i) Periodic monitoring of the use of confidential and nonpublic personal information of consumers by partners, vendors, and servicers whose role is material to the Products and Services, and the information security programs of such partners, vendors, and servicers.

8. Achieve shall maintain and make available upon request by the Bank or as applicable, any other insured depository institution, any and all records, reports or other materials required by this ORDER.

9. The Board shall ensure that Achieve's Compliance Program provides for the establishment and implementation of an effective training program for appropriate personnel that includes regular, specific, comprehensive training on applicable Consumer Protection Laws for employees having responsibilities that relate to Consumer Protection Laws, including senior management and the Board, commensurate with their individual job functions and duties.

10. Achieve shall ensure that its Compliance Program includes procedures for:

(a) Promptly notifying the Bank or any other insured depository institution, as applicable, of regulatory agencies' inquiries, customer complaint correspondence from all

sources of complaints, including social media and internet-based complaints, or legal action received from any third party, in each case relating to a Product or Service, and

(b) Promptly addressing and resolving consumer inquiries and complaints relating to a Product or Service regardless of the source of the inquiries or complaints.

11. Achieve shall ensure that its Compliance Program includes a compliance audit component to ensure an effective and independent review of its internal policies and procedures and compliance with Consumer Protection Laws. The compliance audit shall include procedures and processes that ensure:

(a) Audit practices and procedures are consistent with Generally Accepted Auditing Standards, are independent, and adequate in scope;

(b) Completion of a compliance audit plan each calendar year that is reviewed and approved by the Board;

(c) Annual risk assessments to ensure that compliance audits are performed with reasonable frequency;

(d) Assignment of ratings or expressions of opinion as to the adequacy, effectiveness, and efficiency of the internal control environment and compliance audit findings, deficiencies, and recommendations relating to a Product or Service, as documented in a written report and provided to the Board, with the review of the report documented in the Board minutes, together with a report of the Board's actions in response to the audit, including, where applicable, an explanation why a recommendation has not been implemented; and

(e) Provisions for an adequate formal tracking and monitoring system for exceptions identified by compliance audits and regulatory examinations.

12. Within 60 days from the effective date of this ORDER, Achieve shall submit the revised Compliance Program, including identification of proposed personnel, to the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") for review and comment. Within 15 days of the receipt of any comments from the Regional Director, the Board shall revise the Compliance Program, if necessary, to incorporate the Regional Director's comments and thereafter adopt, implement, and fully comply with the revised Compliance Program. The Board's review and approval of the revised Compliance Program shall be recorded in its minutes.

13. Achieve shall ensure that all Products and Services offered pursuant to any arrangement with any insured depository institution are not in conflict with the insured depository institution's compliance management plan and compliance management systems. Any such arrangement shall require that the insured depository institution has ultimate authority to determine the terms, manner and conditions under which any Product or Service will be offered to consumers, consistent with the requirements of law including FDIC regulations and guidance, and that Achieve will make any necessary changes, on a prospective basis, in such terms, manner and conditions as the insured depository institution deems necessary or as a result of regulatory guidance, criticism, or formal or informal enforcement action.

### **CONDUCT RELIEF**

14. Achieve shall ensure that all AchieveCard customers, including customers receiving federal benefits on the AchieveCard through the ACH system, are afforded the appropriate protections provided in Regulation E, 12 C.F.R. § 1005 ("Regulation E"). Without limiting the generality of the foregoing, Achieve shall ensure that those customers are provided the disclosures and free, written account histories, given sufficient time to report errors and are

not required to provide more information or documentation than is permissible under Regulation E.

## **II. ORDER FOR RESTITUTION**

### **RESTITUTION ACCOUNT AND PAYMENT FLOOR**

15. Within 10 days from the effective date of the ORDER, Achieve shall deposit into a segregated deposit account (“Restitution Account”) an amount not less than \$1,100,000 (“Payment Floor”) at First California Bank, which account shall be held consistent with the requirements of the Restitution Plan and transferred with the full remaining balance intact to any successor thereto, for the purpose of providing restitution as required by the ORDER.

16. Achieve shall make all restitution payments required by the ORDER, regardless of whether the total of such payments exceeds the Payment Floor. Until Achieve’s restitution obligations under this ORDER are fully satisfied, Achieve shall deposit additional funds into the Restitution Account, as necessary, to ensure that it contains sufficient funds to satisfy Achieve’s restitution obligations under this ORDER. Once the FDIC notifies Achieve in writing that all such restitution obligations have been satisfied, including any obligations under paragraph 22 concerning unclaimed restitution payments, Achieve may close the Restitution Account and remit remaining funds in accordance with its Restitution Plan, described in paragraphs 17 through 26 below.

### **RESTITUTION PLAN**

17. Within 30 days from the effective date of this Order, Achieve shall prepare a comprehensive Restitution Plan (“Restitution Plan”) for the following categories of consumers identified by Achieve, pursuant to criteria established by the FDIC, as having incurred fees

and/or unpaid error resolution claims on any Achieve product offered pursuant to an arrangement with an insured depository institution (hereinafter “Eligible Consumers”):

- (a) any consumer who, between April 8, 2011 and December 31, 2012, was charged any fee associated with a bill payment service, including but not limited to a \$1.50 fee for online bill payment, a \$2.50 fee incurred when a physical check was sent with online bill payment, a \$2.50 fee for bill payment over the phone and/or a \$2.50 “Payment to Other Party” fee; or
- (b) any consumer who, between April 8, 2011 and November 30, 2012, submitted a claim for resolution of a dispute involving a PIN-based transaction or transaction exceeding \$500 and that claim was either abandoned by the consumer or denied by Achieve; or
- (c) any consumer who, between April 8, 2011 and January 20, 2013, received federal benefit payments on an Achieve product and submitted a claim for resolution of a dispute and that claim was either abandoned by the consumer or denied by Achieve.

18. The Restitution Plan shall, at a minimum, require Achieve to reimburse fees and/or unpaid claims incurred by Eligible Consumers from April 8, 2011 to the dates specified in paragraph 17 above.

19. Achieve shall submit the Restitution Plan to the Regional Director for review, comment and non-objection prior to implementation. The Restitution Plan submitted for review to the Regional Director shall include the proposed text of letters and/or electronic mail that shall be sent to Eligible Consumers regarding restitution payments. The text of letters and/or electronic mail shall include satisfactory language explaining the reason Achieve is sending a restitution payment, including that Achieve is sending the payment as the result of an enforcement action by the FDIC. The letters and/or electronic mail shall also include reference

to and the web addresses for any FDIC press releases related to the ORDER, and shall not, in any manner, limit a consumer's rights. Achieve shall then address any comments of the Regional Director, making such changes as may be required to the proposed letters and/or electronic mail. The letters and/or electronic mail, incorporating any changes that may be required in response to comments by the Regional Director, shall be sent by United States Postal Service first-class mail and/or electronic mail to all Eligible Consumers entitled to receive restitution payments in accordance with the ORDER.

20. Within 30 days from the effective date of this ORDER, Achieve shall submit to the Regional Director, for review and approval, a proposed announcement to be prominently posted on Achieve's website that describes the ORDER and the restitution to be made by Achieve to Eligible Consumers. The announcement shall set forth procedures whereby individuals can check their eligibility for restitution from Achieve and can provide updated electronic mail and/or United States Postal Service mailing address information, via a toll-free number and via the Achieve website. The Regional Director shall notify Achieve in writing of any comments or non-objection to the proposed announcement. Achieve shall address any comments of the Regional Director, making such changes as may be required to the proposed announcement. Upon receipt of the Regional Director's written non-objection, the announcement, incorporating any changes that may be required in response to comments by the Regional Director, shall be prominently and promptly posted by Achieve to its website without further changes, but in no event later than 60 days from the effective date of this ORDER.

21. Within 60 days of receipt of non-objection from the Regional Director, Achieve shall implement the Restitution Plan. Any required restitution amount shall be provided to each of the Eligible Consumers in the form of a certified or bank check; or by crediting the account of

an existing accountholder, in accordance with the Restitution Plan. Restitution provided by Achieve shall not limit consumers' rights in any way.

22. When Achieve makes cash restitution by certified or bank check made payable to an Eligible Consumer, Achieve shall send the certified or bank check by United States Postal Service first-class mail, address correction service requested, to the Eligible Consumer's last known mailing address as maintained in Achieve's records. Achieve shall make reasonable attempts to obtain a current mailing address for any Eligible Consumer whose notification letter and/or restitution check is returned for any reason, using standard address search methodologies, and shall promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the certified or bank check for any Eligible Consumer is returned to Achieve after such second mailing by Achieve, or if a current mailing address cannot be identified using standard address search methodologies, Achieve shall retain the restitution amount of such Eligible Consumer for a period of three-hundred and sixty (360) days from the date the restitution check was originally mailed, during which period such amount may be claimed by such Eligible Consumer upon appropriate proof of identity. After such time, these monies will be disposed of in accordance with the Restitution Plan.

23. Achieve shall retain for three years all records pertaining to the Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the Eligible Consumers; the names, contact, and account information of the Eligible Consumers; any mailing records; and documentation that the appropriate restitution was made. Upon the conclusion of the three-year period noted herein, this requirement may be eliminated upon 30-days' prior notice to, and non-objection from the Regional Director.

24. Achieve shall retain, at its expense, an independent auditing firm (“Firm”) to determine compliance with the Restitution Plan. Prior to the engagement of the Firm, and no later than 30 days from the effective date of this ORDER, Achieve shall submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the Regional Director for non-objection. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures for engagements.

25. The engagement letter between Achieve and the Firm shall grant the FDIC access to the Firm’s staff, work-papers, and materials prepared in the course of the Firm’s engagement and preparation of the reports required by the ORDER.

26. To be acceptable to the Regional Director, the Firm must be an objective and unaffiliated third party and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy and meet auditor independence requirements of the Securities and Exchange Commission.

### **III. ORDER TO PAY CIVIL MONEY PENALTY**

27. **IT IS FURTHER ORDERED** that by reason of the violations of law and/or regulations, and after taking into account the CONSENT AGREEMENT, the appropriateness of the penalty with respect to the financial resources and good faith of Achieve, the gravity of the conduct by Achieve, the history of previous conduct by Achieve, and such other matters as justice may require, including the severity of the risks to and losses of consumers, pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), Achieve shall pay a total civil money penalty of \$110,000. Achieve shall pay the civil money penalty to the Treasury of the United

States, as directed by the FDIC. Achieve shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification from such payment from any third party.

#### **IV. NOTIFICATION AND REPORTING REQUIREMENTS**

##### **PROGRESS REPORTS AND CERTIFICATIONS OF COMPLIANCE**

28. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, Achieve shall provide a written progress report addressing each provision of the ORDER and detailing the form, manner, results and dates of any actions taken to secure compliance with the provisions of the ORDER to the Regional Director. All progress reports and other written responses to the ORDER shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the Chairman of the Board of Managers and the President, acting in their official capacities. The certification of compliance shall include the following:

(a) A statement confirming that Achieve is in compliance with all provisions of the ORDER; or

(b) If Achieve is not in compliance with all provisions of the ORDER, Achieve must provide:

(i) A list of the provisions with which Achieve is not yet in compliance, an explanation of why Achieve is not yet in compliance with each specific provision, and a description of the actions Achieve has taken to comply with the provision; and

(ii) A statement as to when Achieve will be in full compliance with the ORDER.

##### **SHAREHOLDER NOTIFICATION**

29. Achieve shall provide a copy of the ORDER to its members.

## **V. SAVINGS CLAUSE AND EFFECTIVE DATE OF THE ORDER**

The provisions of the ORDER shall not bar, estop, or otherwise prevent the FDIC or any other federal or state agency or department from taking any other action against Achieve or any of the Bank's current or former institution-affiliated parties, as that term is defined in Section 3(u) of the Act, 12 U.S.C. § 1813(u).

The ORDER shall be effective on the date of issuance.

Calculation of time limitations for compliance with the terms of the ORDER shall be based on calendar days, unless otherwise noted.

The provisions of the ORDER shall be binding on Achieve, its officers, agents, servants, employees, institution-affiliated parties, and any successors and assigns thereof.

The provisions of the ORDER shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside in writing by the FDIC.

Issued pursuant to delegated authority this 28<sup>th</sup> day of May, 2013.

/s/  
Sylvia H. Plunkett  
Senior Deputy Director  
Division of Depositor and Consumer Protection