

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	
	)	
FIRST CALIFORNIA BANK	)	
WESTLAKE VILLAGE, CALIFORNIA	)	CONSENT ORDER, ORDER
	)	FOR RESTITUTION, AND
	)	ORDER TO PAY
	)	CIVIL MONEY PENALTY
	)	
	)	FDIC-13-046b
(INSURED STATE NONMEMBER BANK)	)	FDIC-13-047k
	)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency under Section 3(q) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1813(q), for First California Bank, Westlake Village, California (“Bank” or “FCB”).

The FDIC determined that the Bank has engaged in unsafe or unsound banking practices, engaged 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) stemming from the marketing and promotion of prepaid debit card products and implementation of error resolution procedures by third parties, and engaged in other violations of law, including maintaining a deposit account in violation of 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”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), 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 17, 2013, that is accepted by the FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or 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 the Bank, its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from engaging in unsafe or unsound banking practices and violations of law and/or regulations, as more fully set forth in the Compliance Report of Examination dated June 4, 2012 (“Compliance ROE”), and from operating in violation of Section 5 by engaging in the deceptive and unfair practices described herein and stemming from ineffective oversight of the Electronic Payment Services (“EPS”) division of the Bank.

IT IS FURTHER ORDERED that the Bank, its institution-affiliated parties, and its successors and assigns, shall take the following affirmative action:

**CORRECTIONS OF VIOLATIONS OF LAW**

1. Within 60 days of the effective date of this ORDER, the Bank shall correct all violations of law, as more fully set forth in the Compliance ROE and as described herein, and implement procedures to prevent their recurrence. The Bank’s actions as required by this

paragraph shall be satisfactory to the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") as determined at subsequent examinations and/or visitations.

2. The Bank shall cease all unfair and deceptive acts or practices, ensure that all third parties cease all unfair and deceptive acts or practices and comply with the guidance set forth in *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (FIL-26-2004, issued March 11, 2004). Without limiting the generality of the foregoing, the Bank shall not:

(a) Make, or allow to be made, any misleading or deceptive representation, statement, or omission, expressly or by implication, in any advertising, marketing, offering, or soliciting of any products and services, including products and services offered pursuant to agreements with third parties ("Third-Party Products"); or

(b) Impose, or allow to be imposed, requirements for resolution of disputed claims that are not clearly and conspicuously disclosed to consumers who use Bank products and services, including Third-Party Products.

3. The Bank shall comply with the Treasury Rule, including affording the protections outlined in Regulation E, 12 C.F.R. § 1005, to consumers receiving federal payments on prepaid debit cards through the ACH system.

4. The Bank shall effect and maintain future compliance with Section 5 and the Treasury Rule.

**IT IS FURTHER ORDERED** that the Bank take additional affirmative actions as follows:

#### **COMPLIANCE MANAGEMENT SYSTEM**

5. Within 30 days from the effective date of this ORDER, the Bank's Board of Directors ("Board") shall increase oversight of the affairs of the Bank by establishing an

acceptable compliance management system (“CMS”) that addresses the elevated consumer protection risks associated with the institution’s third-party activities. Without limiting the generality of the foregoing, the Board shall take the following actions:

(a) Review, revise, develop and/or enhance, as necessary, a comprehensive written compliance program (“Compliance Program”) to ensure that all activities by third parties comply with Section 5 and otherwise to ensure compliance with all applicable consumer protection and fair lending laws, including Section 5, implementing rules and regulations, regulatory guidance and statements of policy (collectively “Consumer Protection Laws”). At a minimum, the Compliance Program shall provide for and include comprehensive written policies and procedures designed to prevent violations of Consumer Protection Laws, and prevent associated risks of harm to consumers;

(b) Appoint a qualified compliance officer (“Compliance Officer”) who possesses the requisite knowledge and experience to administer the Compliance Program. The compliance officer shall report directly to the Board and provide a monthly report on the Bank’s compliance program, third-party activities, and compliance with Consumer Protection Laws and this ORDER. Within 30 days from the effective date of this ORDER, the Board shall submit the name and qualifications of Compliance Officer to the FDIC Regional Director for review and non-objection;

(c) Perform an analysis of current staffing and increase staffing dedicated to compliance with Consumer Protection Laws, with an emphasis on retaining individuals with experience in overseeing third-party relationships, particularly as necessary to oversee the Bank’s third-party prepaid debit card operations and tax-refund transfer activities; and

(d) Establish a Compliance Committee (“Compliance Committee”) to meet monthly and ensure that the Bank has appropriate oversight of all third-party activities to maintain compliance with applicable Consumer Protection Laws. The Board shall appoint at least two outside Directors, who are not officers of the Bank or the Bank’s holding company, to the Bank’s Compliance Committee.

6. Within 30 days from the effective date of this ORDER, the Board shall integrate the EPS Division into the Bank’s Compliance Program to ensure that the activities of third parties comply with Consumer Protection Laws and the guidance set forth in *Guidance for Managing Third Party Risk* (FIL 44-2008, issued June 6, 2008). Without limiting the generality of the foregoing, the Board shall take the following actions to strengthen the Compliance Program and integrate the EPS Division into the Bank’s Compliance Program:

(a) Assess the level of compliance, legal, reputational, strategic, operational, transaction, credit and other risks posed by the Bank’s third-party activities relating to compliance with Consumer Protection Laws;

(b) Develop and implement detailed policies and procedures that will adequately address identified risks and provide personnel with all the information needed to perform business transactions in compliance with applicable Consumer Protection Laws;

(c) Ensure that all third-party contracts set clear expectations for adherence to all Consumer Protection Laws;

(d) Ensure that the Compliance Program includes an effective monitoring system for the activities of the Bank’s third parties, with provisions requiring:

- (i) Review, approval, and maintenance of all marketing and solicitation materials, including direct mail or internet solicitations, promotional materials, advertising, telemarketing scripts, and websites;
- (ii) Review, approval, and maintenance of other materials provided or disseminated to customers or potential customers generated in connection with the marketing, administration, and servicing of Third-Party Products, including any cardholder agreements and privacy policies;
- (iii) Completion of annual risk assessments of each third-party product;
- (iv) Periodic compliance reviews by the Bank, including on-site visits, as appropriate, based upon annual risk assessments performed, of all providers of Third-Party Products. These reviews shall include an analysis of the third party's compliance with, at a minimum, the following: Consumer Protection Laws, contractual requirements, performance standards, cardholder agreements, and adherence to both the Bank's and the third parties' internal policies and procedures. Follow-up procedures should also be established to ensure that weaknesses and violations identified during these reviews are corrected in a timely manner and to ensure that corrective action is permanent;
- (v) Formal periodic reporting to the Board and senior management detailing the third parties' efforts to comply with Consumer Protection Laws, including reporting of all potential violations, deficiencies, or other performance and operational concerns; and

(vi) Review and approval of affiliated and non-affiliated marketing

relationships, including lead generators, used directly by the Bank or by third parties.

(e) Establish and implement an effective training program for Bank personnel responsible for overseeing third-party activities. The training program should include regular, specific, and comprehensive training on all applicable Consumer Protection Laws, commensurate with individual job functions and duties;

(f) Ensure that all third parties provide their employees, including management and contractors, with regular, specific, and comprehensive training on all applicable Consumer Protection Laws. The Board shall periodically assess the adequacy of any training provided by third parties, and maintain documentation of the review. Follow-up procedures should also be established to ensure that weaknesses in the training identified during these assessments are corrected in a timely manner;

(g) Enhance procedures for addressing and resolving consumer complaints arising from any Third-Party Product, for monitoring and tracking complaints and identifying any trends concerning the nature of the complaints; to assess any potential compliance, legal, or reputational risk stemming from the complaints, and for promptly addressing any root causes of such complaints. The monitoring and tracking of complaints shall include all sources of complaints, such as social media and internet-based complaints. In addition, the Board shall be made fully aware of all complaints and investigations related to third-party arrangements, including any trends that have a material impact on the institution; and

(h) Establish a plan to ensure that recipients of state and federal benefits who receive those benefit payments through Third-Party Products continue to have uninterrupted access to their funds if the third party experiences any disruption of operations.

### **AUDIT PROGRAM**

7. Within 30 days from the effective date of this ORDER, the Board shall re-evaluate the strength and effectiveness of the Bank's audit program to ensure that consumer compliance audits are sufficient in scope and frequency, and adequately address the Bank's overall consumer compliance risks. The audits shall be conducted by qualified personnel, acceptable to the Regional Director, with experience in conducting independent audits of compliance programs of banks of comparable complexity. At a minimum, the audit program shall require:

(a) Practices and procedures that ensure compliance audits of Third-Party Products are independent and adequate in scope;

(b) Completion of annual risk assessments of each Third-Party Product, as required by paragraph 6 above, to ensure that compliance audits are performed with reasonable frequency;

(c) Completion of an internal compliance audit plan each calendar year for the third-party providers that is reviewed and approved by the Board. At a minimum, periodic independent audits of all Third-Party Product providers must be completed to ensure they are operating within the boundaries of their contract with the Bank, the terms and conditions of cardholder agreements, and are in compliance with applicable Consumer Protection Laws;

(d) Tracking and monitoring of all identified exceptions that are promptly reported to the Board. The Board shall take action to address the audit findings, including



providing appropriate restitution to consumers, and establish follow-up mechanisms to ensure that the corrective actions were lasting; and

(e) Completion of a comprehensive review of all third parties, including a review of all Third-Party Products offered.

## **II. ORDER FOR RESTITUTION**

8. Within 10 days of the effective date of this ORDER, the Bank shall establish and maintain a segregated deposit account (“Achieve Restitution Account”) for funds deposited by Achieve Financial Services, LLC (“Achieve”) pursuant to agreement with the FDIC for availability of restitution with respect to the categories of consumers specified by the FDIC (“Achieve Eligible Consumers”) who used products offered by Achieve. The Bank shall ensure that the Achieve Restitution Account is established in the amount of \$1,100,000 (“Achieve Payment Floor”) for the availability of restitution with respect to Achieve Eligible Consumers, and within 10 days of the effective date of this ORDER shall deposit any funds necessary to reach the Achieve Payment Floor.

9. Within 10 days of the effective date of this ORDER, the Bank shall establish and maintain a segregated deposit account (“Cornerstone Restitution Account”) for availability of restitution with respect to the categories of consumers specified by the FDIC (“Cornerstone Eligible Consumers”) who used products offered by Cornerstone Marketing, LLC (“Cornerstone”). The Bank shall ensure that the Cornerstone Restitution Account is established in the amount of \$10,000 (“Cornerstone Payment Floor”) for the availability of restitution with respect to Cornerstone Eligible Consumers, and within 10 days of the effective date of this ORDER, shall deposit any funds necessary to reach the Cornerstone Payment Floor.

10. The Bank shall be ultimately responsible for funding and distributing full restitution to Achieve and Cornerstone Eligible Consumers. If the FDIC requires the funds in the Restitution Account(s) to be distributed by the Bank to Achieve and/or Cornerstone Eligible Consumers, the Bank shall distribute the required restitution pursuant to a restitution plan submitted to the Regional Director for non-objection. The Bank's restitution plan should be consistent with the restitution plan(s), if any, submitted by Achieve and/or Cornerstone.

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

11. **IT IS FURTHER ORDERED** that by reason of the violations of law and regulations set forth herein, and after taking into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the Bank, the gravity of the violations, the history of previous violations by the Bank, and such other matters as justice may require, pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), the Bank shall pay a total civil money penalty of \$600,000. The Bank shall pay the civil money penalty to the Treasury of the United States, as directed by the FDIC. The Bank 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**

12. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank 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 and the Bank President. The certification of compliance shall include the following:

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

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

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

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

### **SHAREHOLDER NOTIFICATION**

13. The Bank shall either provide a copy of the ORDER to its shareholder(s), or otherwise furnish a description of the ORDER in conjunction with the next meeting of its shareholder(s), in which case such description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Disclosure and Securities Section, 550 17th Street, N.W., Washington, D.C. 20429, for non-objection or comment prior to dissemination to the Bank's shareholder. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement. This description shall be disseminated in conjunction with the Bank's next shareholder communication and in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The terms "next shareholder communication" and "next shareholder meeting" mean the next shareholder communication and

next shareholder meeting immediately after the FDIC provides the Bank with either non-objection of or comments about the description.

**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 the Bank 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 the Bank, 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.

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