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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

BY \_\_\_\_\_

1 STEPHANIE YONEKURA  
Acting United States Attorney  
2 DENNISE D. WILLETT  
Assistant United States Attorney  
3 Chief, Santa Ana Division  
GREGORY W. STAPLES (Cal. Bar No. 155505)  
4 Assistant United States Attorney  
5 411 West Fourth Street  
Suite 8000  
6 Santa Ana, California 92701  
Telephone: (714) 338-3535  
7 Facsimile: (714) 338-3523  
E-mail: greg.staples@usdoj.gov

8 JOHN W. BURKE  
Trial Attorney, Consumer Protection Branch  
9 U.S. Department of Justice  
450 Fifth Street, NW, Suite 6400 South  
10 Washington, D.C. 20001  
Telephone: (202) 353-2001  
11 Facsimile: (202) 514-8742  
12 E-mail: Josh.Burke@usdoj.gov

13 Attorneys for Plaintiff  
14 UNITED STATES OF AMERICA

15 UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
17 SANTA ANA DIVISION

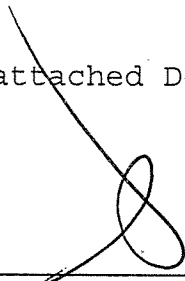
19 UNITED STATES OF AMERICA,  
20 Plaintiff,  
21 v.  
22 COMMERCEWEST BANK,  
23 Defendant.

SACR 15-00025

DEFERRED PROSECUTION AGREEMENT,  
ATTACHMENTS

1           The government submits the attached Deferred Prosecution  
2 Agreement.

3  
4 DATED: March 9, 2015



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5 GREGORY W. STAPLES  
6 Assistant United States Attorney  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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4 UNITED STATES OF AMERICA,  
5 Plaintiff,  
6 v.  
7 COMMERCEWEST BANK,  
8 Defendant.

No.:

DEFERRED PROSECUTION  
AGREEMENT

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11 **DEFERRED PROSECUTION AGREEMENT**

12 Defendant COMMERCEWEST BANK (the "Bank"), by its undersigned  
13 representatives, pursuant to authority granted by the Bank's Board of Directors, and  
14 the United States Department of Justice's Consumer Protection Branch (the  
15 "Department"), enter into this deferred prosecution agreement (the "Agreement").  
16 The terms and conditions of this Agreement are as follows:

17 **Criminal Information and Acceptance of Responsibility**

18 1. The Bank acknowledges and agrees that the Department will file the  
19 attached one-count criminal Information in the United States District Court for the  
20 Central District of California charging the Bank with willfully failing to file a  
21 Suspicious Activity Report, in violation of Title 31, United States Code, Section  
22 5322(a) and 5318(g)(1). In so doing, the Bank: (a) knowingly waives its right to  
23 indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth  
24 Amendment to the United States Constitution, Title 18, United States Code, Section  
25 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives for  
26 purposes of this Agreement and any charges by the United States arising out of the  
27 conduct described in the attached Statement of Facts any objection with respect to  
28 venue and consents to the filing of the Information, as provided under the terms of

1 this Agreement, in the United States District Court for the Central District of  
2 California.

3 2. The Bank admits, accepts, and acknowledges that it is responsible for  
4 the acts of its officers, directors, and employees as charged in the Information, and  
5 as set forth in the Statement of Facts attached hereto as Attachment A and  
6 incorporated by reference into this Agreement, and that the allegations described in  
7 the Information and the facts described in Attachment A are true and accurate. The  
8 Bank reserves the right to contest the applicability of the factual allegations in the  
9 criminal information and/or this Agreement to a specific, private civil litigant or  
10 class of private litigants. Should the Department pursue the prosecution that is  
11 deferred by this Agreement, as a result of any breach of this Agreement by the Bank,  
12 the Bank agrees that it will neither contest the admissibility of nor contradict the  
13 Statement of Facts in any such proceeding, including any guilty plea or sentencing  
14 proceeding. Neither this Agreement nor the criminal Information is a final  
15 adjudication of the matters addressed in such documents.

16 **Term of the Agreement**

17 3. This Agreement is effective for a period beginning on the date on which  
18 the Information is filed and ending two (2) years from that date (the "Term").  
19 However, the Bank agrees that, in the event that the Department determines during  
20 the Term of this agreement, in its sole discretion, that the Bank has knowingly  
21 violated any material provision of this Agreement, an extension or extensions of the  
22 Term of the Agreement may be imposed by the Department, in its sole discretion, for  
23 up to a total additional time period of one year, without prejudice to the  
24 Department's right to proceed as provided in Paragraphs 10 through 13 below. Any  
25 extension of the Agreement extends all terms of this Agreement.

26 **Relevant Considerations**

27 4. The Department enters into this Agreement based on the individual  
28 facts and circumstances presented by this case and the Bank. Among the facts

1 considered were the following: (a) the Bank's willingness to acknowledge and  
2 accept responsibility for its actions; (b) the fact that the violations relate to the  
3 Bank's relationship with a single third-party payment processor and three of the  
4 processor's merchants; (c) the limited time frame of the violations, which occurred  
5 over a 15-month period between April 2012 and July 2013; (d) the Bank's  
6 commitment to continue to enhance its anti-fraud and anti-money laundering  
7 programs; (e) the Bank's agreement, in connection with the settlement of the  
8 Department's civil complaint alleging violations of the Financial Institutions  
9 Reform, Recovery and Enforcement Act, 12 U.S.C. § 1833a ("FIRREA") and the  
10 Anti-Fraud Injunction Act, 18 U.S.C. § 1345, to pay a \$1 million civil penalty, to  
11 pay \$1 million in lieu of administrative forfeiture and enter into a Consent Decree  
12 for Permanent Injunction and Civil Money Penalty, which contains detailed  
13 injunctive provisions (the "Consent Decree"); (f) the Bank's agreement not to assert  
14 any claim, in any legal proceeding, to \$2,913,783.20 that the government seized  
15 from accounts at the Bank; (g) the Bank's extensive cooperation with the  
16 Department's investigation of fraudulent demand drafts (also referred to as  
17 remotely-created checks (RCCs) and/or remotely-created payment orders (RCPOs))  
18 processed through accounts at the Bank; and (h) the Bank's agreement to continue to  
19 cooperate with the Department's investigation.

20 **Cooperation**

21 5. The Bank shall continue to cooperate fully with the Department in any  
22 and all matters relating to fraudulent demand drafts processed through accounts at  
23 the Bank, subject to applicable laws and regulations. The Bank agrees that its  
24 cooperation shall include, but is not limited to, the following:

25 a. The Bank shall truthfully disclose all factual information not  
26 protected by a valid claim of attorney-client privilege or work product doctrine with  
27 respect to demand drafts alleged by the Department to be fraudulent that were  
28 processed through accounts at the Bank about which the Bank has any knowledge or

1 about which the Department may inquire. This obligation of truthful disclosure  
2 includes the obligation of the Bank to provide to the Department, upon request, any  
3 document, record or other tangible evidence relating to demand drafts alleged by the  
4 Department to be fraudulent that were processed through accounts at the Bank about  
5 which the Department may inquire of the Bank.

6 b. Upon request of the Department, with respect to any issue  
7 relevant to its investigation of demand drafts processed through accounts at the  
8 Bank, the Bank shall designate knowledgeable employees, agents or attorneys to  
9 provide the Department the information and materials described in Paragraph 5(a)  
10 above on behalf of the Bank, if there are any such knowledgeable persons employed  
11 by or affiliated with the Bank. It is further understood that the Bank must at all  
12 times provide complete, truthful, and accurate information.

13 c. With respect to any issue relevant to the Department's  
14 investigation of demand drafts processed through accounts at the Bank, the Bank  
15 shall use its best efforts to make available for interview or testimony, as requested by  
16 the Department, present or former officers, directors, employees, agents, agent  
17 employees and consultants of the Bank. This obligation includes, but is not limited  
18 to, sworn testimony before a federal grand jury or in federal trials, as well as  
19 interviews with federal law enforcement and regulatory authorities. Cooperation  
20 under this Paragraph shall include identification of witnesses who, to the knowledge  
21 of the Bank, may have material information regarding the matters under  
22 investigation.

23 d. With respect to any information, testimony, documents, records  
24 or other tangible evidence provided to the Department pursuant to this Agreement,  
25 the Bank consents to any and all disclosures, subject to applicable laws and  
26 regulations, to other governmental authorities, including United States authorities  
27 and those of a foreign government, of such materials as the Department, in its sole  
28 discretion, shall deem appropriate.

1 **Forfeiture Amount**

2 6. As a result of the Bank's conduct, including the conduct set forth in the  
3 Statement of Facts, the parties agree that the Department may institute a civil and/or  
4 criminal forfeiture action against approximately \$2,913,783.20 that the government  
5 seized from accounts at the Bank. In lieu of a forfeiture resulting from a criminal  
6 proceeding, the Bank hereby agrees to waive and not to assert, in any legal  
7 proceeding, any claim to the \$2,913,783.20 seized by the government from accounts  
8 40207631, 40207656, 40207680, 40207706, 96200530, 96200696, and 96400205.

9 **Conditional Release from Liability**

10 7. In return for the full and truthful cooperation of the Bank, and its  
11 compliance with the other terms and conditions of this Agreement, the Department  
12 agrees, subject to Paragraphs 10 through 13 below, not to use any information  
13 related to the conduct described in the attached Statement of Facts against the Bank  
14 in any criminal or civil case, except: (a) in a prosecution for perjury or obstruction  
15 of justice; or (b) in a prosecution for making a false statement. In addition, the  
16 Department agrees, except as provided herein, that it will not bring any criminal case  
17 against the Bank or any of its wholly owned or controlled subsidiaries related to the  
18 conduct of present and former officers, directors, employees, agents, agent  
19 employees and consultants, as described in the attached Statement of Facts, the civil  
20 FIRREA Complaint filed by the Department against the Bank, or relating to  
21 information that the Bank disclosed to the Department prior to the date on which this  
22 Agreement was signed.

23 a. This Paragraph does not provide any protection against  
24 prosecution for any future criminal conduct committed after the date of this  
25 agreement.

26 b. In addition, this Paragraph does not provide any protection  
27 against prosecution of any present or former officers, directors, employees, agents,  
28 agent employees and consultants of the Bank for any violations committed by them.

1 **Deferred Prosecution**

2 8. In consideration of: (a) the past and future cooperation of the Bank  
3 described in Paragraph 5 above; (b) the Bank's waiver and forfeiture of any claim to  
4 \$2,913,783.20 previously seized by the government; and (c) the Bank's agreement  
5 to the payment of \$2 million and the detailed injunctive provisions contained in the  
6 Consent Decree, the Department agrees that any prosecution of the Bank for the  
7 conduct set forth in the attached Statement of Facts, and for the conduct that the  
8 Bank disclosed to the Department prior to the signing of this Agreement, be and  
9 hereby is deferred for the Term of this Agreement.

10 9. The Department further agrees that if the Bank fully complies with all  
11 of its obligations under this Agreement, including compliance with the terms of the  
12 Consent Decree, the Department will not continue the criminal prosecution against  
13 the Bank described in Paragraph 1 and, at the conclusion of the Term, this  
14 Agreement shall expire. Within thirty (30) days of the Agreement's expiration, the  
15 Department shall seek dismissal with prejudice of the criminal Information filed  
16 against the Bank described in Paragraph 1.

17 **Breach of the Agreement**

18 10. If, during the Term of this Agreement, the Department determines, in  
19 its sole discretion, that the Bank has (a) committed any felony under U.S. federal law  
20 subsequent to the signing of this Agreement, (b) at any time provided in connection  
21 with this Agreement deliberately false, incomplete, or misleading information, or  
22 (c) otherwise breached the Agreement, the Bank shall thereafter be subject to  
23 prosecution for any federal criminal violation of which the Department has  
24 knowledge, including the charges in the Information described in Paragraph 1,  
25 which may be pursued by the Department in the U.S. District Court for the Central  
26 District of California or any other appropriate venue. Any such prosecution may be  
27 premised on information provided by the Bank. Any such prosecution that is not  
28 time-barred by the applicable statute of limitations on the date of the signing of this



1 Agreement may be commenced against the Bank notwithstanding the expiration of  
2 the statute of limitations between the signing of this Agreement and the expiration of  
3 the Term plus one year. Thus, by signing this Agreement, the Bank agrees that the  
4 statute of limitations with respect to any such prosecution that is not time-barred on  
5 the date of the signing of this Agreement shall be tolled for the Term plus one year.

6 11. In the event that the Department determines that the Bank has breached  
7 this Agreement, the Department agrees to provide the Bank with written notice of  
8 such breach prior to instituting any prosecution resulting from such breach. The  
9 Bank shall, within thirty (30) days of receipt of such notice, have the opportunity to  
10 respond to the Department in writing to explain the nature and circumstances of such  
11 breach, as well as the actions the Bank has taken to address and remediate the  
12 situation, which explanation the Department shall consider in determining whether  
13 to institute a prosecution.

14 12. In the event that the Department determines that the Bank has breached  
15 this Agreement: (a) all statements made by or on behalf of the Bank to the  
16 Department or to the Court, including the attached Statement of Facts, and any  
17 testimony given by the Bank before a grand jury, a court, or any tribunal, or at any  
18 legislative hearings, whether prior or subsequent to this Agreement, and any leads  
19 derived from such statements or testimony, shall be admissible in evidence in any  
20 and all criminal proceedings brought by the Department against the Bank; and (b)  
21 the Bank shall not assert any claim under the United States Constitution, Rule 11(f)  
22 of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of  
23 Evidence, or any other federal rule that statements made by or on behalf of the Bank  
24 prior or subsequent to this Agreement, or any leads derived therefrom, should be  
25 suppressed. The decision whether conduct or statements of any current director or  
26 employee, or any person acting on behalf of, or at the direction of, the Bank will be  
27 imputed to the Bank for the purpose of determining whether the Bank has violated  
28 any provision of this Agreement shall be in the sole discretion of the Department.

1 13. The Bank acknowledges that the Department has made no  
2 representations, assurances, or promises concerning what sentence may be imposed  
3 by the Court if the Bank breaches this Agreement and this matter proceeds to  
4 judgment. The Bank further acknowledges that any such sentence is solely within  
5 the discretion of the Court and that nothing in this Agreement binds or restricts the  
6 Court in the exercise of such discretion.

7 **Sale or Merger of Bank**

8 14. The Bank agrees that in the event it sells, merges, or transfers all or  
9 substantially all of its business operations as they exist as of the date of this  
10 Agreement, whether such sale is structured as a sale, asset sale, merger, or transfer, it  
11 shall include in any contract for sale, merger, or transfer a provision binding the  
12 purchaser, or any successor in interest thereto, to the obligations described in this  
13 Agreement.

14 **Public Statements by Bank**

15 15. The Bank expressly agrees that it shall not, through present or future  
16 attorneys, officers, directors, employees, agents or any other person authorized to  
17 speak for the Bank make any public statement, in litigation or otherwise,  
18 contradicting the acceptance of responsibility by the Bank set forth above or the  
19 facts described in the attached Statement of Facts. Any such contradictory  
20 statement shall, subject to cure rights of the Bank described below, constitute a  
21 breach of this Agreement and the Bank thereafter shall be subject to prosecution as  
22 set forth in Paragraphs 1 and 2 of this Agreement. The decision whether any public  
23 statement by any such person contradicting a fact contained in the Statement of Facts  
24 will be imputed to the Bank for the purpose of determining whether it has breached  
25 this Agreement shall be at the sole discretion of the Department. If the Department  
26 determines that a public statement by any such person contradicts in whole or in part  
27 a statement contained in the Statement of Facts, the Department shall so notify the  
28 Bank, and the Bank may avoid a breach of this Agreement by publicly repudiating

1 such statement(s) within five (5) business days after notification. The Bank shall be  
2 permitted to raise defenses and to assert affirmative claims in other proceedings  
3 relating to the matters set forth in the Statement of Facts provided that such defenses  
4 and claims do not contradict, in whole or in part, a statement contained in the  
5 Statement of Facts. The Bank reserves the right to contest the applicability of the  
6 factual allegations in the criminal information and/or this Agreement to a specific,  
7 private civil litigant or class of private litigants. This Paragraph does not apply to  
8 any statement made by any present or former officer, director, employee, or agent of  
9 the Bank in the course of any criminal, regulatory, or civil case initiated against such  
10 individual, unless such individual is speaking on behalf of the Bank.

11 **Limitations on Binding Effect of Agreement**

12 16. This Agreement is binding on the Bank and the Department but  
13 specifically does not bind any other federal agencies, or any state, local or foreign  
14 law enforcement or regulatory agencies, or any other authorities, although the  
15 Department will bring the cooperation of the Bank and its compliance with its other  
16 obligations under this Agreement to the attention of such agencies and authorities if  
17 requested to do so by the Bank.

18 **Complete Agreement**

19 17. This Agreement sets forth all the terms of the agreement between the  
20 Bank and the Department. No amendments, modifications or additions to this  
21 Agreement shall be valid unless they are in writing and signed by the Department,  
22 the attorneys for the Bank and a duly authorized representative of the Bank  
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1 **AGREED:**

2 **FOR COMMERCEWEST BANK:**

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4 Date: 3/5/15

By:



Ivo Tjan  
Chairman and  
Chief Executive Officer  
CommerceWest Bank

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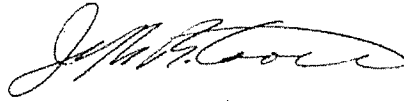
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9 Date: 03/05/2015

By:



Jeffrey B. Coopersmith  
Mark N. Bartlett  
Davis, Wright, Tremaine  
Counsel for CommerceWest Bank

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1 **FOR THE DEPARTMENT OF JUSTICE:**

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MICHAEL S. BLUME  
Director  
RICHARD GOLDBERG  
Assistant Director  
Consumer Protection Branch  
United States Department of Justice

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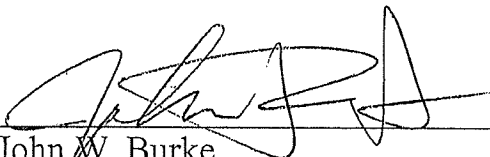
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10 Date: 3/9/15

By:   
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John W. Burke  
Trial Attorney  
Consumer Protection Branch

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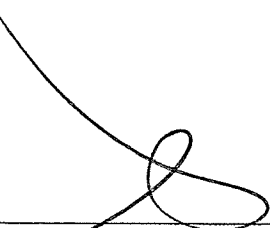
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16 Date: 3/9/15

By:   
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Gregory Staples  
Assistant United States Attorney

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**BANK OFFICER'S CERTIFICATE**

I have read this Agreement and carefully reviewed every part of it with outside counsel for COMMERCEWEST BANK (the "Bank"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Bank, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Bank. Counsel fully advised me of the rights of the Bank, of possible defenses, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of the Bank. I have advised and caused outside counsel for the Bank to advise the Board of Directors fully of the rights of the Bank, of possible defenses, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Bank, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Chairman and Chief Executive Officer for the Bank and that I have been duly authorized by the Bank to execute this Agreement on behalf of the Bank.

Date: 3/15, 2015

By: 

Ivo Tjan  
Chairman and Chief Executive Officer  
Commerce West Bank

1 **CERTIFICATE OF COUNSEL**

2 I am counsel for COMMERCEWEST BANK (the "Bank") in the matter  
3 covered by this Agreement. In connection with such representation, I have  
4 examined relevant Bank documents and have discussed the terms of this Agreement  
5 with the Bank Board of Directors. Based on our review of the foregoing materials  
6 and discussions, I am of the opinion that the representative of the Bank has been duly  
7 authorized to enter into this Agreement on behalf of the Bank and that this  
8 Agreement has been duly and validly authorized, executed, and delivered on behalf  
9 of the Bank and is a valid and binding obligation of the Bank. Further, I have  
10 carefully reviewed the terms of this Agreement with the Board of Directors and the  
11 Chairman and Chief Executive Officer of the Bank. I have fully advised them of  
12 the rights of the Bank, of possible defenses, and of the consequences of entering into  
13 this Agreement. To my knowledge, the decision of the Bank to enter into this  
14 Agreement, based on the authorization of the Board of Directors, is an informed and  
15 voluntary one.

16  
17 Date: March 5, 2015

By.



Jeffrey B. Coopersmith  
Mark N. Bartlett  
Davis Wright Tremaine LLP  
Counsel for CommerceWest Bank

**STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the "Agreement") between the United States Department of Justice's Consumer Protection Branch (the "Department") and CommerceWest Bank ("CommerceWest"). CommerceWest hereby agrees and stipulates that the following information is true and accurate. CommerceWest admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below. Should the Department pursue the prosecution that is deferred by this Agreement, CommerceWest agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding. If this matter were to proceed to trial, the Department would prove beyond a reasonable doubt, by admissible evidence, the facts alleged below and set forth in the criminal Information attached to this Agreement. This evidence would establish the following:

**I. Applicable Law**

1. The Bank Secrecy Act ("BSA"), Title 31 U.S.C. Sections 5311 et seq., and its implementing regulations, which Congress enacted to address an increase in criminal money laundering activities utilizing financial institutions, required domestic banks, insured banks, and other financial institutions to maintain programs designed to detect and report suspicious activity that might be indicative of money laundering and other financial crimes, and to maintain certain records and file reports related thereto that are especially useful in criminal, tax or regulatory investigations or proceedings.

2. CommerceWest was required to file a Suspicious Activity Report (SAR) with the Treasury Department for any transaction conducted or attempted by, at, or through the bank, involving or aggregating at least \$5,000 in funds, where the bank knew, suspected, or had reason to suspect that the transaction involved funds derived from illegal activities. 31 C.F.R. § 1020.320. CommerceWest was



1 required to file a SAR “no later than 30 calendar days after the date of initial  
2 detection by the bank of facts that may constitute a basis for filing a SAR.” Id.

3 **II. CommerceWest and its Relationship with a Third-Party Payment**  
4 **Processor**

5 3. CommerceWest is a federally insured commercial bank based in  
6 Irvine, California.

7 4. From December 2011 to July 2013, CommerceWest provided banking  
8 services to a third-party payment processor (hereinafter referred to as “the  
9 processor”). The processor opened accounts at the bank and acted as an  
10 intermediary between various merchant-clients and CommerceWest.

11 5. On behalf of its merchant-clients, the processor withdrew funds from  
12 the bank accounts of consumers across the country and deposited the funds into  
13 accounts at CommerceWest using a payment device called a demand draft (also  
14 referred to as a remotely-created check (RCC) and/or a remotely-created payment  
15 order (RCPO)). A demand draft is a check created not by the account holder but  
16 rather by a third party using the account holder’s name and bank account  
17 information. Unlike ordinary checks, demand drafts are not signed by the account  
18 holder. In place of the account holder’s signature, a demand draft contains a  
19 statement claiming that the account holder has authorized the check. The merchant  
20 or third-party payment processor creates a demand draft in the name of the consumer  
21 and deposits it in the merchant’s – or payment processor’s – own bank account. In  
22 this case, the processor deposited demand drafts into its account at CommerceWest.

23 6. Many of the demand drafts created by the processor’s merchants were  
24 reversed or “returned” by consumers’ banks. Consumers’ banks indicated that the  
25 reasons for these returns included: the consumer had not authorized the debit; the  
26 merchant had breached a warranty; the account did not exist; the account was closed  
27 or frozen; the account owner had blocked checks to a certain payee; or there were  
28 insufficient funds to cover the check. “Unauthorized” and “breach of warranty”

1 returns typically require the consumer to fill out an affidavit, signed under penalty of  
2 perjury, stating that he or she did not authorize the check. Federal Regulators have  
3 warned that high return rates may be indicative of fraudulent practices by the  
4 merchant. See, e.g., FDIC Financial Institution Letter: Revised Guidance on  
5 Payment Processor Relationships (January 31, 2012) (“Financial institutions  
6 should be alert to an increase in consumer complaints about payment processors  
7 and/or merchant clients or an increase in the amount of returns or chargebacks, all of  
8 which may suggest that the originating merchant may be engaged in unfair or  
9 deceptive practices or may be inappropriately obtaining or using consumers’  
10 personal account information to create unauthorized RCCs or ACH debits.”).

11 7. From April 2012 through July 2013, on behalf of three  
12 merchant-clients, the processor deposited more than 1.3 million demand drafts into  
13 its accounts at CommerceWest. In aggregate, these deposits totaled more than \$45  
14 million. Approximately 50% of the demand drafts deposited by the processor on  
15 behalf of these three merchants were returned by consumers’ banks. In 2012,  
16 CommerceWest found it necessary to hire temporary workers to process the volume  
17 of returns generated by the processor.

18 8. In 2012 and 2013, CommerceWest received letters and calls from  
19 several banks complaining of fraud and warning CommerceWest of unauthorized  
20 demand drafts debited from their customer’s accounts. The letters and calls related  
21 to the processor’s transactions. On several occasions in 2012 and 2013,  
22 CommerceWest agreed to block the processor from charging customers of  
23 complaining banks – but allowed the processor to continue charging customers of  
24 other banks.

25 9. CommerceWest attempted, but was unable, to obtain evidence that the  
26 processor processed legitimate transactions.  
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1           10.    Despite these and other warnings signs received by CommerceWest,  
2 the bank willfully failed to file a SAR reporting the processor, its owners or  
3 employees during the period of time that the processor sent payments through the  
4 bank.

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1                                   **CERTIFICATE OF CORPORATE RESOLUTIONS**

2           WHEREAS, COMMERCEWEST BANK (the "Bank") has been engaged in  
3 discussions with the United States Department of Justice's Consumer Protection  
4 Branch (the "Department") regarding issues arising in relation to the processing of  
5 remotely-created checks through accounts at the Bank; and

6           WHEREAS, in order to resolve such discussions, it is proposed that the Bank  
7 enter into a certain agreement with the Department; and

8           WHEREAS, the Bank's Chairman and Chief Executive Officer, Ivo Tjan,  
9 together with outside counsel for the Bank, have advised the Board of Directors of  
10 the Bank of its rights, possible defenses, the Sentencing Guidelines' provisions, and  
11 the consequences of entering into such agreement with the Department;

12          Therefore, the Board of Directors has RESOLVED that:

13          1.     The Bank (a) acknowledges the filing of the one-count Information  
14 charging the Bank with willfully failing to file a Suspicious Activity Report, in  
15 violation of Title 31, United States Code, Section 5318(g) (1); (b) waives indictment  
16 on such charges and enters into a deferred prosecution agreement with the  
17 Department; and (c) agrees to waive and not to assert, in any legal proceeding, any  
18 claim to the \$2,913,783.20 seized by the government from accounts at the Bank;

19          2.     The Bank accepts the terms and conditions of this Agreement,  
20 including, but not limited to, (a) a knowing waiver of its rights to a speedy trial  
21 pursuant to the Sixth Amendment to the United States Constitution, Title 18, United  
22 States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) a  
23 knowing waiver for purposes of this Agreement and any charges by the United  
24 States arising out of the conduct described in the attached Statement of Facts of any  
25 objection with respect to venue and consents to the filing of the Information, as  
26 provided under the terms of this Agreement, in the United States District Court for  
27 the Central District of California and (c) a knowing waiver of any defenses based on  
28 the statute of limitations for any prosecution relating to the conduct described in the

1 attached Statement of Facts or relating to conduct known to the Department prior to  
2 the date on which this Agreement was signed that is not time-barred by the  
3 applicable statute of limitations on the date of the signing of this Agreement.


4 3. The Chairman and Chief Executive, Ivo Tjan, is hereby authorized,  
5 empowered and directed, on behalf of the Bank, to execute the Deferred Prosecution  
6 Agreement substantially in such form as reviewed by this Board of Directors at this  
7 meeting with such changes as the Chairman and Chief Executive, Ivo Tjan, may  
8 approve;

9 4. The Chairman and Chief Executive, Ivo Tjan, is hereby authorized,  
10 empowered and directed to take any and all actions as may be necessary or  
11 appropriate and to approve the forms, terms or provisions of any agreement or other  
12 documents as may be necessary or appropriate, to carry out and effectuate the  
13 purpose and intent of the foregoing resolutions; and

14 5. All of the actions of the Chairman and Chief Executive, Ivo Tjan,  
15 which actions would have been authorized by the foregoing resolutions except that  
16 such actions were taken prior to the adoption of such resolutions, are hereby  
17 severally ratified, confirmed, approved, and adopted as actions on behalf of the  
18 Bank.

19  
20 Date: 3-06, 2015

By:



Corporate Secretary

COMMERCEWEST BANK

1 CERTIFICATE OF SERVICE BY MAIL

2 I, REBECCA SATO, declare: That I am a citizen of the United  
3 States and resident or employed in Orange County, California; that my  
4 business address is United States Attorney's Office, 411 West Fourth  
5 Street, Suite 8000, Santa Ana, California 92701; that I am over the  
6 age of eighteen years, and am not a party to the above-entitled  
7 action;

8 That I am employed by the United States Attorney for the Central  
9 District of California, who is a member of the Bar of the United  
10 States District Court for the Central District of California, at  
11 whose discretion the service by mail described in this Certificate  
12 was made; that on March 9, 2015, I deposited in the United States  
13 Mails, United States Attorney's Office, 411 West Fourth Street, Suite  
14 8000, Santa Ana, California 92701 in the above-entitled action, in an  
15 envelope bearing the requisite postage, a copy of:

16 DEFERRED PROSECUTION AGREEMENT; ATTACHMENTS  
17 addressed to:

18 SEE ATTACHMENT

19  
20 at their last known address, at which place there is a delivery  
21 service by United States Mail.

22 This Certificate is executed on March 9, 2015, Santa Ana,  
23 California. I declare under penalty or perjury that the foregoing is  
24 true and correct.

25   
Rebecca Sato /s/

26 REBECCA SATO  
27  
28

Service List

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COMMERCEWEST BANK  
c/o Jeffrey Coopersmith  
Mark N. Bartlett  
Davis Wright, Tremaine LLP  
1201 Third Ave., Suite 2200  
Seattle, WA 98101