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6 Attorneys for Plaintiff  
VILLAGE VIEW, INC.

7  
8  
9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES**

12 VILLAGE VIEW, INC.,

13 Plaintiff

14 vs.

15 PROFESSIONAL BUSINESS BANK, A  
CALIFORNIA CORPORATION, and DOES 1  
16 through 10;

17 Defendants

Case No. YC064405

**UNLIMITED CIVIL ACTION**

**PLAINTIFF VILLAGE VIEW, INC.'S FIRST  
AMENDED COMPLAINT AGAINST  
PROFESSIONAL BUSINESS BANK FOR:**

1. **FRAUDULENT  
MISREPRESENTATION**
2. **FRAUDULENT INDUCEMENT**
3. **FRAUDULENT CONCEALMENT**
4. **CALIFORNIA COMMERCIAL CODE  
SECTION 11202 (COMMERCIAL  
REASONABLENESS)**
5. **CALIFORNIA COMMERCIAL CODE  
SECTION 11202 (GOOD FAITH)**
6. **NEGLIGENCE**

22  
23 PLAINTIFF VILLAGE VIEW ESCROW, INC. sets forth its claims against DEFENDANT  
24 PROFESSIONAL BUSINESS BANK in this First Amended Complaint as follows:

25 **PARTIES**

26 1. Plaintiff Village View Escrow, Inc. ("Village View Escrow ") is a California corporation  
27 registered with the California Secretary of State. Village View Escrow is organized and authorized to do  
28 business under the laws of the State of California, and is and was at all times mentioned herein qualified

1 to do business in California. Village View Escrow has its principal place of business in the city of  
2 Redondo Beach, County of Los Angeles, California.

3 2. Defendant Professional Business Bank (“Professional Business Bank” or “Bank”) is a  
4 California corporation registered with the California Secretary of State. Professional Business Bank is a  
5 bank with its principal place of business in the city of Los Angeles, Los Angeles County, California and  
6 with a branch location in the city of Pasadena, Los Angeles County, California. Professional Business  
7 Bank is regulated by the Federal Deposit Insurance Corporation (FDIC).

8 3. The true names and capacities of defendants DOES ONE through TEN are unknown to  
9 plaintiff, and plaintiff will seek leave of court to amend this complaint to allege such names and  
10 capacities as soon as they are ascertained.

11 **GENERAL ALLEGATIONS**

12 4. Village View Escrow contends that Professional Business Bank was fraudulent in its  
13 solicitation and maintenance of Village View Escrow’s business banking accounts at its banking  
14 institution.

15 5. Village View Escrow contends that Professional Business Bank liable for numerous  
16 instances of fraudulent wire transfers from Village View Escrow’s account on March 16-17, 2010  
17 pursuant to relevant portions of the California Commercial Code.

18 6. Village View Escrow contends that Professional Business Bank was negligent and  
19 breached its duty of care owed to Village View Escrow in the recovery of stolen funds on and after  
20 March 18, 2010.  
21

22  
23 **PROFESSIONAL BUSINESS BANK’S JULY 2008**  
24 **FRAUDULENT SOLICITATION**  
25 **OF VILLAGE VIEW ESCROW’S BANKING BUSINESS**

26 7. Prior to entering a contract for banking with Professional Business Bank, Village View  
27 Escrow met with Stevan Saylor and William Saylor, who were trust account representatives of  
28 Professional Business Bank, in July 2008 to discuss Village View Escrow’s banking needs and concerns.

1 Village View Escrow asserts that Stevan Saylor and William Saylor were authorized agents and  
2 representatives of Professional Business Bank at all times mentioned in this first amended complaint.  
3

4 8. During the July 2008 meeting Village View Escrow stated to Stevan Saylor and William  
5 Saylor that its escrow business was at its inception, that it needed banking guidance and that its licensing  
6 with the State of California depended on the safekeeping of its escrow funds.

7 9. Village View Escrow stated to Stevan Saylor and William Saylor that its escrow business  
8 was to begin its operation in or around October 2008 and that the ability to safeguard the escrow funds of  
9 its customers with a safe and reliable bank was its primary concern and business.

10 10. During the July 2008 meeting, Professional Business Bank agents Stevan Saylor and  
11 William Saylor issued a written statement entitled "Village Escrow Presentation" specifically addressed  
12 to Village View Escrow declaring that Professional Business Bank specialized and possessed expertise in  
13 the following:

- 14 a. Safety
- 15 b. Service
- 16 c. Support
- 17 d. Specific Experience in Escrow, Title and Banking; and
- 18 e. Historical and Current Knowledge of the Escrow Industry
- 19 f. Trust
- 20 g. Ease of Transfers
- 21 h. Strength, Experience and Support
- 22 i. The positive indicators reflected in the Bank's 2007 Financials
- 23 j. The importance of a well diversified and capitalized bank

24 (Copy of "Village Escrow Presentation" dated July 22, 2008 from Professional Business Bank attached  
25 hereto as **Exhibit A.**)

26 11. Professional Business Bank professed in writing to Village View Escrow that its agents  
27 attended "California Escrow Association" and "Escrow Institute" events so as to stay current and up to  
28

1 date on the trends and happenings in escrow so that it could provide excellent service and safety to its  
2 escrow customers.

3 12. Professional Business Bank stated in writing to Village View Escrow that:

4 a. “We [Professional Business Bank] share information and keep current with changes in the  
5 Escrow industry.”

6 b. “[Professional Business Bank’s] knowledge, experience and understanding in dealing with the  
7 regulatory authorities, helps us more easily coordinate and resolve any requests/issues that  
8 may arise.”

9 13. In July 2008 Professional Business Bank agents Stevan Saylor and William Saylor  
10 provided a written statement entitled “Experienced Pro-Business Banking” to Village View Escrow  
11 wherein Professional Business Bank declared the following:

12 “ProBizBank offers a full range of personal and professional credit and deposit services—  
13 including secure online Internet Banking—with an emphasis on serving the needs of small to  
14 medium sized businesses”

15 “Now you can do all your banking from home or even from the office! ProBizBank offers  
16 NetTeller—advanced and secure financial online banking services that’s available 24 hours a day,  
17 7 days a week. All you need is a computer, a ProBizBank account and your personalized user ID  
18 and password. It’s simple, safe and so convenient you’ll wonder how you ever lived without it.”

19 (Copy of “Experienced Pro-Business Banking” from Professional Business Bank attached hereto as  
20 **Exhibit B.**)

21 14. Professional Business Bank agents Stevan Saylor and William Saylor provided a written  
22 statement entitled “Professional Business Bank: A New Year with a Bright Future” to Village View  
23 Escrow wherein Professional Business Bank declared the following:

24 “As most of you know, we have joined forces with Belvedere Capital to create a  
25 platform for future growth. Together, under a newly formed holding company named  
26 Belvedere SoCal, we plan to build on the Professional Business Bank foundation to  
27 become Southern California’s leading community bank. We have an aggressive  
28 strategy to grow organically and through acquisition to build a customer focused

1 franchise that delivers top-tier service and a valuable product set to small businesses....”

2 “While we expect to accelerate our growth plans, our commitment to service will  
3 continue in the tradition you have come to expect from Professional Business Bank.

4 The people who have served your banking needs over the years are still here to help  
5 you, and the investments the bank has made in state-of –the-art electronic banking and  
6 remote capture technology are already paying dividends for many of our customers.”

7 (Copy of “Professional Business Bank: A New Year with a Bright Future” from Professional Business  
8 Bank attached hereto as **Exhibit C.**)

9 15. Village View Escrow is informed and believes, and on that basis alleges that Professional  
10 Business Bank stated in writing that it specialized in those areas enumerated above, and put forth efforts  
11 as described above, in a deliberate attempt to gain Village View Escrow’s trust and reliance on its  
12 experience and expertise in the area of escrow business banking so that it could gain Village View  
13 Escrow’s business.

14 16. Through its written statements Professional Business Bank led Village View Escrow to  
15 believe that the Bank possessed superior, unique, current and “state of the art” banking systems, and that  
16 the Bank abided by the standards set forth by the regulatory agencies (including the FFIEC, FDIC and  
17 the CDFI) which governed the Bank.

18 17. During the July 2008 meeting, Professional Business Bank agents Stevan Saylor and  
19 William Saylor verbally represented to Village View Escrow that Professional Business Bank was well  
20 diversified and adequately capitalized and demonstrated the same through the Bank’s 2007 Financials.

21 18. Professional Business Bank agents Stevan Saylor and William Saylor verbally represented  
22 to Village View Escrow that they possessed, and drew knowledge from, former title officer experience  
23 and stated that they could verify that Professional Business Bank understood the unique banking/trust  
24 account needs and concerns associated with escrow offices like Village View.

25 19. Professional Business Bank agents Stevan Saylor and William Saylor verbally represented  
26 themselves and the employees at Professional Business Bank as “experts” in the management of trust  
27 accounts and made affirmative verbal representations about Professional Business Bank’s superior trust  
28 fund account management experience including statements regarding the safety of its online banking

1 system, its security system and the benefits/credits associated with its trust accounts.

2 20. Through its verbal statements Professional Business Bank led Village View Escrow to  
3 believe that Professional Business Bank possessed current and “state of the art” banking systems and that  
4 the Bank abided by the standards set forth by the regulatory agencies (including the FFIEC, FDIC and  
5 the CDFI) which governed the Bank.

6 21. Village View Escrow is informed and believes, and on that basis alleges that Professional  
7 Business Bank stated verbally that it specialized in those areas enumerated above, and put forth efforts as  
8 described above, in a deliberate attempt to gain Village View Escrow’s trust and reliance on its  
9 experience and expertise in the area of escrow business banking so that it could gain Village View  
10 Escrow’s business.

11 22. Prior to entering into a banking relationship and contract with Professional Business Bank,  
12 Village View Escrow was not informed of any unsafe and unsound business practices employed by the  
13 Bank.

14 23. In entering into a banking relationship and contract with Professional Business Bank,  
15 Village View Escrow justifiably, reasonably and detrimentally relied on the written and verbal  
16 representations made by Professional Business Bank and its agents in July 2008 regarding the purported  
17 strength of the Bank’s financials.

18 24. In entering into a banking relationship and contract with Professional Business Bank,  
19 Village View Escrow justifiably, reasonably and detrimentally relied on the written and verbal  
20 representations made by Professional Business Bank and its agents in July 2008 regarding Professional  
21 Business Bank’s safety, service, support, escrow/title/banking experience, its historical and current  
22 knowledge of the escrow industry and its knowledge of the standards set forth by the regulatory agencies  
23 (including the FFIEC, FDIC and the CDFI) which governed Professional Business Bank.

24  
25 **CONTRACTS EXECUTED BETWEEN**  
**VILLAGE VIEW ESCROW AND PROFESSIONAL BUSINESS BANK**

26  
27 **JULY 23, 2008 CONTRACT**

28 25. Based on the written and verbal representations made by Professional Business Bank on

1 July 22, 2008, Village View Escrow chose to allow Professional Business Bank to handle its small  
2 business escrow banking needs from approximately July 2008 until after March 18, 2010.

3 26. Based on the written and verbal representations made by Professional Business Bank on  
4 or before July 22, 2008, Village View Escrow signed an agreement on July 23, 2008 entitled  
5 “Professional Business Bank NetTeller Online BusinessBanking (Corporate)” which stated that Village  
6 View Escrow and Professional Business Bank would be bound to the following agreements: (i)  
7 NetTeller Online BusinessBanking Agreement; (ii) Automated Clearing House Origination Services  
8 Agreement; and (iii) Funds Transfer Agreement.

9 (A copy of “Professional Business Bank NetTeller Online BusinessBanking (Corporate)” dated July 23,  
10 2008 between Village View Escrow and Professional Business Bank attached hereto as **Exhibit D.**)

11 27. The July 23, 2008 agreement entitled “Professional Business Bank NetTeller Online  
12 BusinessBanking (Corporate)” stated that Village View Escrow could amend, *inter alia*, the Funds  
13 Transfer Agreement from time to time.

14 28. The July 23, 2008 agreement entitled “Professional Business Bank NetTeller Online  
15 BusinessBanking (Corporate)” stated that when Village View Escrow deems it necessary or appropriate,  
16 Village View Escrow could negotiate the terms, including amendments and supplements, of the Funds  
17 Transfer Agreement.

18 29. No employee of Professional Business Bank ever discussed the details of the specific  
19 terms of the July 23, 2008 contract with Village View.

20 30. No representative of Professional Business Bank ever distinguished the type of “funds  
21 transfers” to which the July 23, 2008 contract applied.

22 31. In executing the Funds Transfer Agreement of July 23, 2008 with Professional Business  
23 Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the prior representations  
24 made by Professional Business Bank and its representatives when they informed Village View Escrow  
25 that the Bank had an “advanced and secure financial online banking service” and that all Village View  
26 Escrow needed was “a computer, a ProBizBank account and [a] personalized user ID and password.”

27 32. In executing the Funds Transfer Agreement of July 23, 2008 with Professional Business  
28 Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the prior representations

1 made by Professional Business Bank and its representatives when they informed Village View Escrow  
2 that Professional Business Bank had “state of the art” online banking system with multifactor  
3 authentication system and a security system that complied with regulatory agency recommendations.

4 **SEPTEMBER 3, 2008 CONTRACT**

5 33. Based on the written and verbal representations made by Professional Business Bank on  
6 July 22, 2008, Village View Escrow chose to allow Professional Business Bank to handle its small  
7 business escrow banking needs from approximately July 2008 until after March 18, 2010.

8 34. Based on the written and verbal representations made by Professional Business Bank, on  
9 or about September 3, 2008 Village View Escrow signed another agreement (“Professional Business  
10 Bank Funds Transfer Agreement”) with Professional Business Bank wherein Village View Escrow  
11 agreed to conduct funds transfers under certain additional agreed upon security procedures including the  
12 following:

13 a. “Option Two” which “ requires segregation of the create/release duties (‘dual  
14 controls’), with one User creating Requests and a second User responsible for review and release of the  
15 Request to the Bank” ; and

16 b. Two designated “Authorized Representatives” from Village View Escrow who are  
17 “authorized to provide Requests to the Bank” which entitles Professional Business Bank to rely on any  
18 written communication “believed by [the Bank] in good faith to be genuine and to have been signed by  
19 an authorized representative.”

20 (A copy of “Funds Transfer Agreement” dated September 3, 2008 between Village View Escrow and  
21 Professional Business Bank attached hereto as **Exhibit E.**)

22 35. Under the terms of the September 3, 2008 contract, Village View Escrow agreed to  
23 periodically review its security procedures and make changes or additions to those procedures in  
24 accordance with its needs so that the security procedures would remain “commercially reasonable” in  
25 accordance with the terms of the contract set forth by Professional Business Bank.

26 36. In executing the Funds Transfer Agreement of November 3, 2008 with Professional  
27 Business Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the  
28 representations made by Professional Business Bank and its representatives when they informed Village

1 View Escrow that the September 3, 2008 contract would provide further and extra security to the Village  
2 View Escrow funds handled by Professional Business Bank.

3 37. No employee of Professional Business Bank ever discussed the term “commercially  
4 reasonable” as it appeared in the September 3, 2008 contract with Village View Escrow.

5 38. No employee of Professional Business Bank ever discussed the term “good faith” as it  
6 appeared in the September 3, 2008 contract with Village View Escrow.

7 39. No employee of Professional Business Bank ever discussed the details of the specific  
8 terms of the September 3, 2008 contract with Village View.

9 40. No representative of Professional Business Bank ever distinguished the type of funds  
10 transfers to which the September 3, 2008 the contract applied.

11 41. In executing the Funds Transfer Agreement of September 3, 2008 with Professional  
12 Business Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the prior  
13 representations made by Professional Business Bank and its representatives when they informed Village  
14 View Escrow that the Bank had an “advanced and secure financial online banking service” and that all  
15 Village View Escrow needed was “a computer, a ProBizBank account and [a] personalized user ID and  
16 password.”

17 42. In executing the Funds Transfer Agreement of September 3, 2008 with Professional  
18 Business Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the prior  
19 representations made by Professional Business Bank and its representatives when they informed Village  
20 View Escrow that Professional Business Bank had “state of the art” online banking system with  
21 multifactor authentication system and a security system that complied with regulatory agency  
22 recommendations.

23 **NOVEMBER 3, 2008 CONTRACT**

24 43. Based on the written and verbal representations made by Professional Business Bank,  
25 Village View Escrow chose to allow Professional Business Bank to handle its small business escrow  
26 banking needs from approximately July 2008 until after March 18, 2010.

27 44. Based on the written and verbal representations made by Professional Business Bank, on  
28 or about November 3, 2008 Village View Escrow entered into an additional agreement entitled

1 “Professional Business Bank Funds Transfer Agreement and Authorization” with Professional Business  
2 Bank wherein Village View Escrow agreed to conduct funds transfers under certain agreed upon  
3 additional and supplemental security procedures including the following:

4 a. Authorization and confirmation of funds transfers by email from a specific Village  
5 View Escrow email address specified in the November 3, 2008 Agreement;

6 b. Authorization and confirmation of funds transfers from two named employees at  
7 Village View Escrow identified and specified in the November 3, 2008 Agreement.

8 (A copy of “Funds Transfer Agreement and Authorization” dated November 3, 2008 between Village  
9 View Escrow and Professional Business Bank attached hereto as **Exhibit F.**)

10 45. In executing the Funds Transfer Agreement of November 3, 2008 with Professional  
11 Business Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the  
12 representations made by Professional Business Bank and its representatives when they informed Village  
13 View Escrow that the November 3, 2008 contract would provide further and extra security to the Village  
14 View Escrow funds handled by Professional Business Bank.

15 46. No representative of Professional Business Bank ever discussed the details of the specific  
16 terms of the November 3, 2008 contract with Village View.

17 47. No representative of Professional Business Bank ever distinguished the type of funds  
18 transfers to which the November 3, 2008 contract applied.

19 48. In executing the Funds Transfer Agreement of November 3, 2008 with Professional  
20 Business Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the prior  
21 representations made by Professional Business Bank and its representatives when they informed Village  
22 View Escrow that the Bank had an “advanced and secure financial online banking service” and that all  
23 Village View Escrow needed was “a computer, a ProBizBank account and [a] personalized user ID and  
24 password.”

25 49. In executing the Funds Transfer Agreement of November 3, 2008 with Professional  
26 Business Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the prior  
27 representations made by Professional Business Bank and its representatives when they informed Village  
28 View Escrow that Professional Business Bank had “state of the art” online banking system with

1 multifactor authentication system and a security system that complied with regulatory agency  
2 recommendations.

3 **MARCH 4, 2009 CONTRACT**

4 50. Based on the written and verbal representations made by Professional Business Bank,  
5 Village View Escrow chose to allow Professional Business Bank to handle its small business escrow  
6 banking needs from approximately July 2008 until after March 18, 2010.

7 51. Based on the written and verbal representations made by Professional Business Bank, on  
8 or about March 4, 2009 Village View Escrow entered into an additional agreement entitled “Professional  
9 Business Bank Funds Transfer Agreement and Authorization” with Professional Business Bank wherein  
10 Village View Escrow agreed to conduct funds transfers under certain agreed upon additional and  
11 supplemental security procedures including the following:

12 a. Authorization and confirmation of receipt of a payment order by “call back” from  
13 specific Village View Escrow telephone numbers specified in the March 4, 2009 Agreement;

14 b. Authorization and confirmation of receipt of a payment order by “call back” to two  
15 named employees at Village View Escrow identified and specified in the March 4, 2009 Agreement.

16 (A copy of “Professional Business Bank Funds Transfer Agreement and Authorization” dated March 4,  
17 2009 between Village View Escrow and Professional Business Bank attached hereto as **Exhibit G.**)

18 52. In executing the Professional Business Bank Funds Transfer Agreement of March 4, 2009  
19 with Professional Business Bank, Village View Escrow justifiably, reasonably and detrimentally relied  
20 on the representations made by Professional Business Bank and its representatives when they informed  
21 Village View Escrow that the March 4, 2009 contract would provide further and extra security to the  
22 Village View Escrow funds handled by Professional Business Bank.

23 53. No representative of Professional Business Bank ever discussed the specific terms of the  
24 March 4, 2009 contract with Village View.

25 54. No representative of Professional Business Bank ever distinguished the type of funds  
26 transfers to which the March 4, 2009 contract applied.

27 55. In executing the Funds Transfer Agreement of March 4, 2009 with Professional Business  
28 Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the prior representations

1 made by Professional Business Bank and its representatives when they informed Village View Escrow  
2 that the Bank had an “advanced and secure financial online banking service” and that all Village View  
3 Escrow needed was “a computer, a ProBizBank account and [a] personalized user ID and password.”

4 56. In executing the Funds Transfer Agreement of March 4, 2009 with Professional Business  
5 Bank, Village View Escrow justifiably, reasonably and detrimentally relied on the prior representations  
6 made by Professional Business Bank and its representatives when they informed Village View Escrow  
7 that Professional Business Bank had “state of the art” online banking system with multifactor  
8 authentication system and a security system that complied with regulatory agency recommendations.

9 57. In executing (1) the “Professional Business Bank NetTeller Online BusinessBanking  
10 (Corporate)” agreement of July 23, 2008; (2) the “Professional Business Bank Funds Transfer  
11 Agreement” of September 3, 2008, (3) the “Professional Business Bank Funds Transfer Agreement and  
12 Authorization” of November 3, 2008, (4) the “Professional Business Bank Funds Transfer Agreement  
13 and Authorization” of March 4, 2009, Village View Escrow justifiably, reasonably and detrimentally  
14 relied on the representations made by Professional Business Bank that their funds would be processed  
15 and transferred by the Bank under the specific terms specified in each of the agreements.

16 **THE FDIC AND CDFI’S ISSUANCE OF A CEASE AND DESISTS ORDER**  
17 **TO PROFESSIONAL BUSINESS BANK IN AUGUST 2009**

18 58. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
19 was investigated by Federal Deposit Insurance Corporation (“FDIC”) and the California Department of  
20 Financial Institutions (“CDFI”) for unsafe and unsound banking practices in 2008 and 2009.

21 59. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
22 was issued by the Federal Deposit Insurance Corporation (“FDIC”) and the California Department of  
23 Financial Institutions (“CDFI”) an order to “Cease and Desist” its operation of unsafe and unsound  
24 banking practices in or around August of 2009 for the mismanagement of its institution. (“Cease and  
25 Desist Order” issued to Professional Business Bank attached hereto as **Exhibit H.**)

26 60. Professional Business Bank was issued by the FDIC and the CDFI an order to Cease and  
27 Desist its operation of unsafe and unsound banking practices including “operating with management  
28 whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits.”

1           61. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
2 stipulated to, consented to, and accepted, the issuance by the FDIC and the CDFI to Professional  
3 Business Bank an Order to Cease and Desist as a result of its mismanagement and its unsafe and unsound  
4 banking practices in or around August of 2009.

5           62. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
6 knew, or should have known, of its unsafe and unsound business practices when it solicited the banking  
7 business of Village View.

8           63. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
9 knew, or should have known, of its unsafe and unsound business practices when it represented the  
10 strength of its financials to Village View Escrow in July 2008.

11           64. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
12 knew, or should have known, of its unsafe and unsound business practices when it represented the its  
13 capabilities to Village View Escrow in July 2008.

14           65. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
15 conducted unsafe and unsound banking practices in the handling of Village View Escrow's accounts.

16           66. Plaintiff is informed and believes and thereupon alleges that Defendant Professional  
17 Business Bank concealed its unsafe and unsound banking practices in the handling of Village View  
18 Escrow's accounts in an effort to induce Village View Escrow to enter into, and maintain, a banking  
19 business relationship with Professional Business Bank.

20                           **PROFESSIONAL BUSINESS BANK'S FAILURE TO REPORT**  
21                           **ATTEMPTED THEFT IN FEBRUARY 2010**

22           67. Plaintiff is informed and believes and thereupon alleges that a third party attempt was  
23 made to break into, or hack into, Village View Escrow's account at Professional Business Bank in  
24 February 2010 with the intention of committing a theft of Village View Escrow's money.

25           68. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
26 and their Internet Technology Manager were aware of the third party attempt to break into, or hack into,  
27 Village View Escrow's account at Professional Business Bank in February 2010.

28           69. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank

1 and their Internet Technology Manager failed to report the third party attempt to break into or hack into  
2 Village View Escrow's account at Professional Business Bank in February 2010 to Village View Escrow  
3 so that Village View Escrow could take necessary steps to guard against fraud and theft.

4 70. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
5 and their Internet Technology Manager failed to report the third party attempt to break into or hack into  
6 Village View Escrow's account at Professional Business Bank in February 2010 to any law enforcement  
7 agency so that the law enforcement agency could take necessary steps to guard against fraud and theft.

8 71. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
9 and their Internet Technology Manager failed to report the third party attempt to break into or hack into  
10 Village View Escrow's account at Professional Business Bank in February 2010 to any security  
11 representative within Professional Business Bank so that the Bank could take necessary steps to guard  
12 against fraud and theft.

13 72. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
14 and their Internet Technology Manager failed to report the third party attempt to break into, or hack into  
15 Village View Escrow's account at Professional Business Bank in February 2010 to any appropriate  
16 authority in an effort to conceal the inadequacies of Professional Business Bank's unsafe and unsound  
17 banking practices and its unsafe online banking system.

18 73. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
19 and their Internet Technology Manager failed to report the third party attempt to break into or hack into  
20 Village View Escrow's account at Professional Business Bank in February 2010 to any appropriate  
21 authority in an effort to conceal the inadequacies of Professional Business Bank's online banking system.

22 74. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
23 and their Internet Technology Manager failed to report the third party attempt to break into or hack into,  
24 Village View Escrow's account at Professional Business Bank in February 2010 to any appropriate  
25 authority in an effort to induce Village View Escrow to maintain its business account at Professional  
26 Business Bank.

27 75. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
28 continued to represent its banking practices as safe and secure after the third party attempt to break into

1 or hack into, Village View Escrow's account at Professional Business Bank in February 2010.

2 76. Village View Escrow maintained its account at Professional Business Bank in justifiable  
3 reliance on the Bank's misrepresentations and omissions of truth regarding the third party attempt to  
4 break into or hack into Village View Escrow's account at Professional Business Bank in February 2010 .

5 77. Plaintiff asserts that had it known of the third party attempt to break into or hack into  
6 Village View Escrow's account at Professional Business Bank in February 2010, it would have taken any  
7 and all necessary steps to guard against the same.

8 **VILLAGE VIEW ESCROW'S MAINTENANCE OF A**  
9 **COMPREHENSIVE COMPUTER SECURITY PROGRAM**  
10 **DURING THE DURATION OF ITS BANKING RELATIONSHIP**  
11 **WITH PROFESSIONAL BUSINESS BANK**

12 78. Plaintiff asserts that it implemented an appropriate comprehensive computer security  
13 programs for Village View Escrow's computer systems since its inception as a business in or around  
14 October 2008 and at all times during its banking relationship with Professional Business Bank.

15 79. Plaintiff asserts that it maintained an appropriate comprehensive security programs for  
16 Village View Escrow's computer systems at all times during its banking relationship with Professional  
17 Business Bank.

18 80. Plaintiff asserts that its employment of an appropriate comprehensive security programs  
19 for Village View Escrow's computer systems was, at all times during its banking relationship with  
20 Professional Business Bank, reasonable and effective.

21 **FRAUDULENT WIRE TRANSFERS OF MARCH 16-17, 2010**

22 81. Village View Escrow used the services of Professional Business Bank as the sole handler  
23 of its finances from 2008 until after March 18, 2010.

24 82. On March 16, 2010 Professional Business Bank permitted 10 unauthorized funds transfers  
25 totaling \$195,874.43 (One Hundred Ninety Five Thousand Eight Hundred Seventy Four Dollars and  
26 Forty Three Cents) to be transferred out of Village View Escrow's trust account with Professional  
27 Business Bank.

28 83. On March 17, 2010 Professional Business Bank permitted 16 unauthorized funds transfers

1 totaling \$269,681.54 (Two Hundred Sixty Nine Thousand Six Hundred Eighty One Dollars and Fifty  
2 Four Cents) to be transferred out of Village View Escrow's trust account with Professional Business  
3 Bank.

4 84. Neither Plaintiff Village View Escrow nor any of its agents, managers, representatives,  
5 officers or employees authorized, initiated, approved or ratified the fraudulent wire transfers on March  
6 16-17, 2010 totaling \$465, 557.97.

7 85. Plaintiff is informed and believes and thereupon alleges that the fraudulent wire transfers  
8 were initiated by an unknown third party with no affiliation with Village View Escrow and with no  
9 authority to act on behalf of Village View Escrow.

10 86. Plaintiff is informed and believes and thereupon alleges that the fraudulent wire transfers  
11 were caused by Professional Business Bank for the following reasons:

- 12 a. The failure by Professional Business Bank to abide by the terms of the "Professional Business  
13 Bank Funds Transfer Agreement" dated July 23, 2008 executed by and between Professional  
14 Business Bank and Village View Escrow;
- 15 b. The failure by Professional Business Bank to abide by the terms of the "Professional Business  
16 Bank Funds Transfer Agreement" dated September 3, 2008 executed by and between  
17 Professional Business Bank and Village View Escrow;
- 18 c. The failure by Professional Business Bank to abide by the terms of the "Professional Business  
19 Bank Funds Transfer Agreement and Authorization" dated November 3, 2008 executed by  
20 and between Professional Business Bank and Village View Escrow;
- 21 d. The failure by Professional Business Bank to abide by the terms of the "Professional Business  
22 Bank Funds Transfer Agreement and Authorization" dated March 4, 2009 executed by and  
23 between Professional Business Bank and Village View Escrow;
- 24 e. The failure by Professional Business Bank to employ a commercially reasonable security  
25 system to protect Village View Escrow's trust account as defined by the California  
26 Commercial Code;
- 27 f. The failure by Professional Business Bank to accept the funds transfers orders in good faith  
28 and in compliance with the security procedures selected by Village View Escrow as defined

1 by the California Commercial Code; and

2 g. The failure by Professional Business Bank to detect “red flag” indicators of wire transfer  
3 fraud prior to, and on the dates of, the fraudulent wire transfers.

4  
5 **PROFESSIONAL BUSINESS BANK’S FAILURE TO ADHERE TO THE STANDARDS SET**  
6 **FORTH IN THE FFIEC 2005 GUIDANCE IN THE OFFERING, IMPLEMENTATION AND**  
7 **MAINTENANCE OF ITS ONLINE SECURITY SYSTEMS**

8 87. Plaintiff is informed and believes and thereupon alleges that at all times during their  
9 banking relationship Defendant Professional Business Bank unreasonably failed to abide by the standards  
10 of a relevant regulatory agency in which it professed it had knowledge, experience and understanding.

11 88. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
12 stated in writing and stated verbally to Village View Escrow the following with regard to its regulation  
13 by relevant banking authorities such as the FFIEC and the FDIC:

14 “[Professional Business Bank’s] knowledge, experience and understanding in dealing  
15 with the regulatory authorities, helps us more easily coordinate and resolve any  
16 requests/issues that may arise.”

17 89. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
18 stated in writing and stated verbally to Village View Escrow that the Bank had “state-of –the-art  
19 electronic banking” and made representations as follows with regard to the safety of its online banking  
20 system:

21 “Now you can do all your banking from home or even from the office! ProBizBank offers  
22 NetTeller—advanced and secure financial online banking services that’s available 24 hours a day,  
23 7 days a week. All you need is a computer, a ProBizBank account and your personalized user ID  
24 and password. It’s simple, safe and so convenient you’ll wonder how you ever lived without it.”

25 Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-17, 2010  
26 unauthorized fraudulent wire transfers, Professional Business Bank did not employ or maintain a “state  
27 of the art” electronic banking system as it represented it did.

28 90. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-

1 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank wrongfully and knowingly  
2 misrepresented to Village View Escrow that all Village View Escrow needed to complete a simple, safe  
3 and convenient transfer of funds was a computer, a ProBizBank account and a personalized user ID and  
4 password.

5 91. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
6 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank's authentication system was  
7 outdated, inadequate, unsafe and unsound based upon the Federal Financial Institutions Examination  
8 Council ("FFIEC") 2005 Guidance.

9 92. The FFIEC is comprised of regulatory agencies including the FDIC, which regulates  
10 Professional Business Bank, and the FFIEC is empowered to prescribe uniform principles and standards  
11 for the federal examination of financial institutions including Professional Business Bank.

12 93. In 2005 the FFIEC set forth standards known as "Authentication in an Internet Banking  
13 Environment" for banks including Professional Business Bank to follow with regard to risk management  
14 controls necessary to authenticate the identity of customers accessing internet-based financial services.  
15 (Federal Financial Institutions Examination Council ("FFIEC") 2005 Guidance attached hereto as  
16 **Exhibit I.**)

17 94. The 2005 FFIEC Guidance state as follows:

18 a. Financial institutions engaging in any form of Internet banking should have effective and  
19 reliable methods to authenticate customers.

20 b. Account fraud and identity theft are frequently the result of single-factor (e.g. ID/password)  
21 authentication exploitation.

22 c. The [FFIEC] agencies consider single factor authentication, as the only control mechanism, to  
23 be inadequate for high risk transactions involving access to customer information or the movement of  
24 funds to other parties.

25 95. The 2005 FFIEC Guidance recognizes three types of factors:

26 (a) Something the user **KNOWS** (e.g. a password/PIN);

27 (b) Something the user **HAS** (e.g. ATM card/USB Token);

28 (c) Something the user **IS** (e.g. fingerprint/voice recognition).

1           96.     Multifactor authentication comprises the use of two or more of the three listed factors;  
2 single factor authentication is the use of only one of the factors.

3           97.     Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
4 employed the use of single factor authentication on March 16-17, 2010 when it should have employed a  
5 multifactor authentication as prescribed by the standards set forth in the FFIEC's 2005 Guidance.

6           98.     Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
7 fraudulently represented that it employed the use of a multifactor authentication system as prescribed by  
8 the standards set forth in the FFIEC's 2005 Guidance when it employed a single factor authentication  
9 system.

10          99.     Village View Escrow justifiably, reasonably and detrimentally relied on the written and  
11 verbal representations by Professional Business Bank that its "knowledge, experience and understanding  
12 in dealing with the regulatory authorities" such as the FFIEC would include meeting the standards set  
13 forth by those agencies, including the FFIEC's 2005 Guidance.

14          100.    Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
15 knew of the FFIEC's 2005 Guidance and that Professional Business Bank unreasonably and fraudulently  
16 failed to maintain the standards set forth in the FFIEC's 2005 Guidance to the detriment of Village View  
17 Escrow.

18          101.    Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
19 knew of the FFIEC's 2005 Guidance and that Professional Business Bank unreasonably and fraudulently  
20 made representations that the Bank had "state-of -the-art electronic banking" when it did not, and that  
21 the Bank made misrepresentations as follows with regard to the safety of its online banking system:

22                "Now you can do all your banking from home or even from the office! ProBizBank offers  
23                NetTeller—advanced and secure financial online banking services that's available 24 hours a day,  
24                7 days a week. All you need is a computer, a ProBizBank account and your personalized user ID  
25                and password. It's simple, safe and so convenient you'll wonder how you ever lived without it."  
26

27                **PROFESSIONAL BUSINESS BANK'S FAILURE TO ADHERE TO THE STANDARDS SET**  
28                **FORTH IN THE FFIEC'S 2006 FAQs IN THE IMPLEMENTATION AND MAINTENANCE OF**



1 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank’s authentication system was  
2 outdated, inadequate, unsafe and unsound based upon the Federal Financial Institutions Examination  
3 Council (“FFIEC”) 2006 Frequently Asked Questions.

4 108. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
5 17, 2010 unauthorized fraudulent wire transfers Professional Business Bank’s authentication system was  
6 outdated, inadequate, unsafe and unsound based upon the 2006 Frequently Asked Questions (“2006  
7 FAQs”) issued by the FFIEC to help banks including Professional Business Bank understand the  
8 FFIEC’s 2005 Guidance. (Federal Financial Institutions Examination Council (“FFIEC”) 2006 FAQs  
9 attached hereto as **Exhibit J.**)

10 109. The 2006 FAQs states as follows:

11 **Q:** “Would two-factor authentication include using two of the same type of factor (e.g., two  
12 different passwords) if they are used at different points in the applications?”

13 **A:** “By definition true multifactor authentication requires the use of solutions from two or more  
14 of the three categories of factors. Using multiple solutions from the same category at different points in  
15 the process may be part of a layered security or other compensating control approach, but it would not  
16 constitute multifactor authentication.”

17 **Q:** “Is a user logon ID considered one of the factors in multifactor authentication?”

18 **A:** “No, because user logon IDs are not secret.”

19 110. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
20 employed the use of single factor authentication on March 16-17, 2010 when it should have employed a  
21 multifactor authentication as prescribed by the standards set forth in the FFIEC’s 2006 FAQs.

22 111. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
23 fraudulently misrepresented that it employed the use of a multifactor authentication system as prescribed  
24 by the standards set forth in the FFIEC’s 2006 FAQs when it employed a single factor authentication  
25 system.

26 112. Village View Escrow justifiably, reasonably and detrimentally relied on the written and  
27 verbal representations by Professional Business Bank that its “knowledge, experience and understanding  
28 in dealing with the regulatory authorities” such as the FFIEC would include meeting the standards set

1 forth by those agencies, including the FFIEC's 2006 FAQs.

2 113. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
3 knew of the FFIEC's 2006 FAQs and that Professional Business Bank unreasonably and fraudulently  
4 failed to maintain the standards set forth in the FFIEC's 2006 FAQs to the detriment of Village View  
5 Escrow.

6 114. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
7 knew of the FFIEC's 2006 FAQs and that Professional Business Bank unreasonably and fraudulently  
8 made misrepresentations that the Bank had "state-of-the-art electronic banking" when it did not, and  
9 that the Bank made misrepresentations as follows with regard to the safety of its online banking system:

10 "Now you can do all your banking from home or even from the office! ProBizBank offers  
11 NetTeller—advanced and secure financial online banking services that's available 24 hours a day,  
12 7 days a week. All you need is a computer, a ProBizBank account and your personalized user ID  
13 and password. It's simple, safe and so convenient you'll wonder how you ever lived without it."

14  
15 **PROFESSIONAL BUSINESS BANK'S FAILURE TO ADHERE TO THE STANDARDS SET**  
16 **FORTH IN THE FDIC'S FINANCIAL INSTITUTIONS LETTER (FIL-32-2007)**

17 115. Plaintiff is informed and believes and thereupon alleges that at all times during their  
18 banking relationship Defendant Professional Business Bank unreasonably failed to abide by the standards  
19 of a relevant regulatory agency in which it professed it had knowledge, experience and understanding.

20 116. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
21 stated in writing and stated verbally to Village View Escrow the following with regard to its regulation  
22 by relevant banking authorities such as the FFIEC and the FDIC:

23 "[Professional Business Bank's] knowledge, experience and understanding in dealing  
24 with the regulatory authorities, helps us more easily coordinate and resolve any  
25 requests/issues that may arise."

26 117. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
27 stated in writing and stated verbally to Village View Escrow that the Bank had "state-of-the-art  
28 electronic banking" and made representations as follows with regard to the safety of its online banking

1 system:

2 “Now you can do all your banking from home or even from the office! ProBizBank offers  
3 NetTeller—advanced and secure financial online banking services that’s available 24 hours a day,  
4 7 days a week. All you need is a computer, a ProBizBank account and your personalized user ID  
5 and password. It’s simple, safe and so convenient you’ll wonder how you ever lived without it.”

6 118. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
7 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank did not employ or maintain  
8 a “state of the art” electronic banking system as it represented it did.

9 119. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
10 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank wrongfully and knowingly  
11 misrepresented to Village View Escrow that all Village View Escrow needed to complete a simple, safe  
12 and convenient transfer of funds was a computer, a ProBizBank account and a personalized user ID and  
13 password.

14 120. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
15 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank’s authentication system was  
16 outdated, inadequate, unsafe and unsound based upon the FDIC’s 2007 Financial Institutions Letter  
17 entitled “Supervisory Policy on Identity Theft” (“FIL-32-2007”).

18 121. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank’s  
19 antiquated authentication system at the time of the March 16-17, 2010 unauthorized fraudulent wire  
20 transfers was a failure to act in accordance with the FDIC’s 2007 Financial Institutions Letter entitled  
21 “Supervisory Policy on Identity Theft” (“FIL-32-2007”) . (FDIC’s 2007 Financial Institutions Letter  
22 entitled “Supervisory Policy on Identity Theft” (“FIL-32-2007”) attached hereto as **Exhibit K.**)

23 122. The FDIC is a primary federal regulator of banks that are chartered by states including  
24 California. The FDIC’s FIL-32-2007 imposes upon the banks governed by the FDIC including  
25 Professional Business Bank an affirmative and continuing duty to protect the privacy of its customer’s  
26 accounts and information in a time of evolving fraud.

27 123. FIL-32-2007 is a policy statement that “emphasizes the FDIC’s well-defined expectations  
28 that institutions under its supervision detect, prevent and mitigate the effects of identity theft in order to

1 protect consumers and help ensure safe and sound operations.”

2 124. FIL-32-2007 states:

- 3 a. In guidance that became effective January 1, 2005 [the FFIEC’s 2005 Guidance], the federal  
4 banking agencies made it clear that they expect institutions to use stronger and more reliable  
5 methods to authenticate the identity of costumers using electronic banking systems.
- 6 b. The FDIC has issued a number of other supervisory guidance documents articulating its  
7 position and expectations concerning identity theft.

8 125. FIL-32-2007 refers banks including Professional Business Bank to the FFIEC’s 2005  
9 Guidance and 2006 FAQs for details and clarification.

10 126. Plaintiff is informed and believes and thereupon that Professional Business Bank failed in  
11 its obligations to “detect, prevent and mitigate the effects of identity theft” as set forth in the 2007 FDIC  
12 FIL-32-2007 to the detriment of Village View Escrow.

13 127. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
14 employed the use of single factor authentication on March 16-17, 2010 when it should have employed a  
15 multifactor authentication as prescribed by the standards set forth in the FIL-32-2007 as it referred to the  
16 FFIEC's 2005 Guidance and 2006 FAQs.

17 128. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
18 fraudulently misrepresented that it employed the use of a multifactor authentication system as prescribed  
19 by the standards set forth in the FIL-32-2007 when it employed a single factor authentication system.

20 129. Village View Escrow justifiably, reasonably and detrimentally relied on the written and  
21 verbal representations by Professional Business Bank that its “knowledge, experience and understanding  
22 in dealing with the regulatory authorities” such as the FDIC and FFIEC would include meeting the  
23 standards set forth by those agencies, including the FIL-32-2007 and the FFIEC’s 2005 Guidance and  
24 2006 FAQs.

25 130. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
26 knew of the FIL-32-2007 and that Professional Business Bank unreasonably failed in its obligations to  
27 “detect, prevent and mitigate the effects of identity theft” in February 2010 and March 2010.

28 131. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank

1 knew of the FIL-32-2007 and that Professional Business Bank unreasonably and fraudulently failed to  
2 maintain the standards set forth in the FIL-32-2007 to the detriment of Village View Escrow.

3 132. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
4 knew of the FIL-32-2007 and that Professional Business Bank unreasonably and fraudulently made  
5 misrepresentations that the Bank had “state-of –the-art electronic banking” when it did not, and that the  
6 Bank made misrepresentations as follows with regard to the safety of its online banking system:

7 “Now you can do all your banking from home or even from the office! ProBizBank offers  
8 NetTeller—advanced and secure financial online banking services that’s available 24 hours a day,  
9 7 days a week. All you need is a computer, a ProBizBank account and your personalized user ID  
10 and password. It’s simple, safe and so convenient you’ll wonder how you ever lived without it.”

11 133. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
12 knew of the FIL-32-2007 and that Professional Business Bank unreasonably concealed the third party  
13 attempt to break into or hack into Village View Escrow’s Account at Professional Business Bank in  
14 February 2010.

15 **PROFESSIONAL BUSINESS BANK’S FAILURE TO HEED TO THE WARNING**  
16 **SET FORTH IN THE FDIC’S 2009 SPECIAL ALERT**

17 134. Plaintiff is informed and believes and thereupon alleges that at all times during their  
18 banking relationship Defendant Professional Business Bank unreasonably failed to abide by the standards  
19 of a relevant regulatory agency in which it professed it had knowledge, experience and understanding.

20 135. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
21 stated in writing and stated verbally to Village View Escrow the following with regard to its regulation  
22 by relevant banking authorities such as the FFIEC and the FDIC:

23 “[Professional Business Bank’s] knowledge, experience and understanding in dealing  
24 with the regulatory authorities, helps us more easily coordinate and resolve any  
25 requests/issues that may arise.”

26 136. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
27 stated in writing and stated verbally to Village View Escrow that the Bank had “state-of –the-art  
28 electronic banking” and made representations as follows with regard to the safety of its online banking

1 system:

2 “Now you can do all your banking from home or even from the office! ProBizBank offers  
3 NetTeller—advanced and secure financial online banking services that’s available 24 hours a day,  
4 7 days a week. All you need is a computer, a ProBizBank account and your personalized user ID  
5 and password. It’s simple, safe and so convenient you’ll wonder how you ever lived without it.”

6 137. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
7 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank did not employ or maintain  
8 a “state of the art” electronic banking system as it represented it did.

9 138. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
10 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank wrongfully and knowingly  
11 misrepresented to Village View Escrow that all Village View Escrow needed to complete a simple, safe  
12 and convenient transfer of funds was a computer, a ProBizBank account and a personalized user ID and  
13 password.

14 139. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
15 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank’s authentication system was  
16 outdated, inadequate, unsafe and unsound based upon the FDIC’s Special Alert (“SA-147-2009”) to all  
17 CEOs of the financial institutions it regulates including Professional Business Bank. .

18 140. Plaintiff is informed and believes and thereupon alleges that at the time of the March 16-  
19 17, 2010 unauthorized fraudulent wire transfers, Professional Business Bank’s authentication system was  
20 unreasonably unresponsive to the specific warning or “special alert” set forth in the August 2009 FDIC’s  
21 Special Alert (“SA-147-2009”) to all CEOs of the financial institutions it regulates including Professional  
22 Business Bank. (August 2009 FDIC’s Special Alert (“SA-147-2009”) attached hereto as **Exhibit L.**)

23 141. The FDIC’s SA-147-2009 specifically advised Professional Business Bank of the  
24 increased number of fraudulent electronic transfers resulting from compromised login credentials.

25 142. SA-147-2009 refers Professional Business Bank to the 2005 FFIEC Guidance and the  
26 2006 FAQs for information on the appropriate authentication systems to employ to guard against  
27 fraudulent electronic transfers.

28 143. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank

1 unreasonably failed to heed the warning provided by the FDIC in SA-147-2009 in failing to guard  
2 against attempted hacks similar to the one which occurred to Village View Escrow's account in February  
3 2010.

4 144. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
5 unreasonably failed to heed the warning provided by the FDIC in SA-147-2009 in failing to employ a  
6 multifactor authentication system.

7 **PROFESSIONAL BUSINESS BANKS' S MIREPRESENTATION OF ITS USE OF**  
8 **MULTIFACTOR AUTHENTICATION**

9 145. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
10 misrepresented to its clients and customers including Village View Escrow before, during and after the  
11 March 16-17, 2010 fraudulent wire transfer incident that it employed a "multifactor" authentication  
12 system involving usernames and passwords to safeguard its accounts when, in fact, it employed a single  
13 factor authentication system.

14 146. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
15 misrepresented to its clients and customers including Village View Escrow before, during and after the  
16 March 16-17, 2010 fraudulent wire transfer incident that it employed a "multifactor" authentication  
17 system involving usernames and passwords to safeguard its accounts when, in fact, it employed a single  
18 factor authentication system in an effort to induce Village View Escrow to open and maintain business  
19 banking accounts at Professional Business Bank.

20 147. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
21 misrepresented to its clients and customers including Village View Escrow before, during and after the  
22 March 16-17, 2010 fraudulent wire transfer incident that it employed a "multifactor" authentication  
23 system involving usernames and passwords to safeguard its accounts when, in fact, it employed a single  
24 factor authentication system in an effort to conceal the inadequacies of its online banking system.

25 **FIRST CAUSE OF ACTION**  
26 **AGAINST DEFENDANT PROFESSIONAL BUSINESS BANK**  
27 **FOR FRAUDULENT MISPRESENTATION**

28 148. Plaintiff incorporates its general allegations, and all of them set forth in paragraphs 1

1 through 147, as though fully alleged in this cause of action.

2 149. Prior to selecting Professional Business Bank as its financial institution, Village View  
3 Escrow met with representatives from Professional Business Bank who were informed by Village View  
4 Escrow of its banking needs as previously described herein.

5 150. Prior to selecting Professional Business Bank as its financial institution, Village View  
6 Escrow met with representatives from Professional Business Bank who made written and verbal  
7 representations as follows:

8 a. That Professional Business Bank was a safe and sound financial institution with secure  
9 financials;

10 b. That Professional Business Bank had knowledge, experience and understanding of regulatory  
11 authorities such as the FFIEC and FDIC;

12 c. That Professional Business Bank had advanced and secure online banking service;

13 d. That all a customer needed to conduct safe and secure online banking was a computer, a  
14 “ProBizBank” account and a personalized user ID and password;

15 e. That Professional Business Bank had a “state of the art” electronic banking system; and

16 f. That Professional Business Bank employed a multifactor authentication system.

17 151. Village View Escrow is informed and believes and on that basis alleges that Professional  
18 Business Bank represented the above referenced facts as true to Village View Escrow when it knew, or  
19 should have known, they were false.

20 152. Village View Escrow is informed and believes and on that basis alleges that the verbal and  
21 written representation made by Professional Business Bank as enumerated above were fraudulent  
22 misrepresentations designed to lure Village View Escrow into opening a business banking contract with  
23 Professional Business Bank.

24 153. Village View Escrow is informed and believes and on that basis alleges that the verbal and  
25 written representation made by Professional Business Bank as enumerated above were fraudulent  
26 misrepresentations designed to lure Village View Escrow into maintaining a business banking contract  
27 with Professional Business Bank.

28 154. Village View Escrow is informed and believes and on that basis alleges that Professional

1 Business Bank represented the above referenced facts as true to Village View Escrow when it knew, or  
2 should have known, they were false with the intent to gain Village View Escrow's banking business so  
3 that the bank could grow its financial institution for profit.

4 155. Village View Escrow justifiably, reasonably and detrimentally relied on the written and  
5 verbal representations made by Professional Business Bank as enumerated above because they met with  
6 Bank agents who held themselves out as "experts" in banking and escrow matters and the agents  
7 conveyed the information in a believable and reliable verbal and written manner as previously described  
8 herein.

9 156. Village View Escrow financially suffered by having to pay monthly bank fees and other  
10 bank-related fees for banking expertise and services that were misrepresented to Village View Escrow by  
11 the Bank and which the Bank did not possess and/or provide to Village View Escrow.

12 157. In deciding to employ and maintain the services offered by Professional Business Bank,  
13 Village View Escrow accepted as true the totality of representations made by representatives from the  
14 Bank that that Professional Business Bank was uniquely qualified to securely handle the banking needs  
15 of Village View Escrow.

16 158. Had Village View Escrow known that the representations made by agents from  
17 Professional Business Bank were inaccurate, false and misleading, Village View Escrow would not have  
18 selected the Bank to handle its finances.

19 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

20  
21 **SECOND CAUSE OF ACTION**  
22 **AGAINST DEFENDANT PROFESSIONAL BUSINESS BANK**  
23 **FOR FRAUD BY INDUCEMENT**

24 159. Plaintiff incorporates its general allegations, and all of them in paragraphs 1 through 158,  
25 as though fully alleged in this cause of action.

26 160. Prior to selecting Professional Business Bank as its financial institution, Village View  
27 Escrow met with representatives from Professional Business Bank who were informed by Village View  
28 Escrow of its banking needs as previously described herein.

1           161. Prior to selecting Professional Business Bank as its financial institution, Village View  
2 Escrow met with representatives from Professional Business Bank who made written and verbal  
3 representations as follows:

4           a. That Professional Business Bank was a safe and sound financial institution with secure  
5 financials;

6           b. That Professional Business Bank had knowledge, experience and understanding of regulatory  
7 authorities such as the FFIEC and FDIC;

8           c. That Professional Business Bank had advanced and secure online banking service;

9           d. That all a customer needed to conduct safe and secure online banking was a computer, a  
10 “ProBizBank” account and a personalized user ID and password;

11           e. That Professional Business Bank had a “state of the art” electronic banking system; and

12           f. That Professional Business Bank employed a multifactor authentication system.

13           162. Village View Escrow is informed and believes and on that basis alleges that Professional  
14 Business Bank represented the above referenced facts as true to Village View Escrow when it knew, or  
15 should have known, they were false.

16           163. Village View Escrow is informed and believes and on that basis alleges that the verbal and  
17 written representation made by Professional Business Bank as enumerated above were fraudulent  
18 misrepresentations designed to induce Village View Escrow into opening a business banking account  
19 with Professional Business Bank.

20           164. Village View Escrow is informed and believes and on that basis alleges that the verbal and  
21 written representation made by Professional Business Bank as enumerated above were fraudulent  
22 misrepresentations designed to induce Village View Escrow into maintaining a business banking contract  
23 with Professional Business Bank.

24           165. Village View Escrow is informed and believes and on that basis alleges that Professional  
25 Business Bank represented the above referenced facts as true to Village View Escrow when it knew they  
26 were false with the intent to gain and maintain Village View Escrow’s banking business so that the Bank  
27 could grow its financial institution for profit.

28           166. Village View Escrow justifiably, reasonably and detrimentally relied on the written and

1 verbal representations made by Professional Business Bank as enumerated above because they met with  
2 Bank agents who held themselves out as “experts” in banking and escrow matters and the agents  
3 conveyed the information in a believable and reliable verbal and written manner as previously described  
4 herein.

5 167. Village View Escrow financially suffered by having to pay monthly bank fees and other  
6 bank-related fees for banking expertise and services that were misrepresented to Village View Escrow by  
7 the Bank and which the Bank did not possess and/or provide to Village View Escrow.

8 168. In deciding to employ and maintain the services offered by Professional Business Bank,  
9 Village View Escrow accepted as true the totality of representations made by representatives from the  
10 Bank that that Professional Business Bank was uniquely qualified to securely handle the banking needs  
11 of Village View Escrow.

12 169. Had Village View Escrow known that the representations made by agents from  
13 Professional Business Bank were inaccurate, false and misleading and designed to induce Village View  
14 Escrow into opening and maintaining a business relationship and contract with the Bank, Village View  
15 Escrow would not have selected the Bank to handle its finances.

16 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

17 **THIRD CAUSE OF ACTION**  
18 **AGAINST DEFENDANT PROFESSIONAL BUSINESS BANK**  
19 **FOR FRAUDULENT CONCEALMENT**

20 170. Plaintiff incorporates its general and previous allegations, and all of them in paragraphs 1  
21 through 169, as though fully alleged in this cause of action.

22 171. Prior to selecting Professional Business Bank as its financial institution, Village View  
23 Escrow met with representatives from Professional Business Bank who were informed by Village View  
24 Escrow of its banking needs as previously described herein.

25 172. Prior to selecting Professional Business Bank as its financial institution, Village View  
26 Escrow met with representatives from Professional Business Bank who made written and verbal  
27 representations as follows:

28 a. That Professional Business Bank was a safe and sound financial institution with secure

1 financials;

2 b. That Professional Business Bank had knowledge, experience and understanding of regulatory  
3 authorities such as the FFIEC and FDIC;

4 c. That Professional Business Bank had advanced and secure online banking service;

5 d. That all a customer needed to conduct safe and secure online banking was a computer, a  
6 “ProBizBank” account and a personalized user ID and password;

7 e. That Professional Business Bank had a “state of the art” electronic banking system; and

8 f. That Professional Business Bank employed a multifactor authentication system.

9 173. Village View Escrow is informed and believes and on that basis alleges that Professional  
10 Business Bank represented the above referenced facts as true to Village View Escrow when it knew they  
11 were false.

12 174. Village View Escrow is informed and believes and on that basis alleges that the verbal and  
13 written representations made by Professional Business Bank as enumerated above were statements of  
14 important facts relating to the safety of Village View Escrow’s accounts at the Bank.

15 175. Village View Escrow is informed and believes and on that basis alleges that the verbal and  
16 written representations made by Professional Business Bank as enumerated above were  
17 misrepresentations designed to conceal the factual risks of banking with Professional Business Bank.

18 176. Village View Escrow is informed and believes and on that basis alleges during the course  
19 of its business relationship with that Professional Business Bank, the Bank concealed the following  
20 essential and important information and facts in an effort to profit at Village View Escrow’s expense:

21 a. The issuance of a Cease and Desist Order from the FDIC and the CDFI for unsafe and  
22 unsound banking practices;

23 b. The attempted break into or hack into Village View Escrow’s account in February 2010;  
24 and

25 c. The lack of a multifactor authentication system for the security of its online banking  
26 systems as prescribed by the FFIEC and the FDIC;

27 177. Village View Escrow did not know that Professional Business Bank was issued a Cease  
28 and Desist Order from the FDIC and the CDFI for unsafe and unsound banking practices until the end of

1 its banking relationship with the Bank.

2 178. Village View Escrow did not know that Professional Business Bank experienced an  
3 attempted break into or hack into Village View Escrow's account in February 2010 and failed to advise  
4 Village View Escrow of the same until the end of its banking relationship with the Bank.

5 179. Village View Escrow did not know that Professional Business Bank lacked of a  
6 multifactor authentication system for the security of its online banking systems as prescribed by the  
7 FFIEC and the FDIC until the end of its banking relationship with the Bank.

8 180. Village View Escrow justifiably, reasonably and detrimentally relied on the written and  
9 verbal representations made by Professional Business Bank as enumerated above because they met with  
10 Bank agents who held themselves out as "experts" in banking and escrow matters and the agents  
11 conveyed the information in a believable and reliable verbal and written manner as previously described  
12 herein.

13 181. Village View Escrow justifiably, reasonably and detrimentally relied on the affirmative  
14 representations made by Professional Business Bank and reasonably trusted the Bank to disclose  
15 important information about the safety of its financial institution.

16 182. Village View Escrow financially suffered by having to pay monthly bank fees and other  
17 bank-related fees for banking expertise and services that were misrepresented to Village View Escrow by  
18 the Bank and which the Bank did not possess and/or provide to Village View Escrow.

19 183. Had Village View Escrow known about the concealed facts concerning Professional  
20 Business Bank, Village View Escrow would not have selected the Bank to handle its finances or  
21 maintained an account with the Bank.

22 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

23 **FOURTH CAUSE OF ACTION**  
24 **AGAINST DEFENDANT PROFESSIONAL BUSINESS BANK**  
25 **PURSUANT TO 11202(b)(i)-(ii) and 11202(c) OF THE**  
26 **CALIFORNIA COMMERCIAL CODE**  
27 **(COMMERCIAL REASONABLENESS)**

28 184. Plaintiff incorporates its general and previous allegations, and all of them in paragraphs 1  
through 183, as though fully alleged in this cause of action.

1 185. Plaintiff asserts that the fraudulent wire transfers of March 16-17, 2010 come under the  
2 governance of California Commercial Code Division 11 section 11104 “Funds Transfer”.

3 186. California Commercial Code Division 11 section 11100 et seq. applies to Funds Transfers.  
4 California Commercial Code section 11202 concerns authorization and verified payment orders.

5 187. California Commercial Code section 11203 concerns the unenforceability of payment  
6 orders.

7 188. California Commercial Code section 11204 concerns the refund of payment on a payment  
8 order.

9 189. Plaintiff asserts that Professional Business Bank is liable for the fraudulent wire transfers  
10 of March 16-17, 2010 described herein under the provisions of California Commercial Code section  
11 11202(b)(i)-(ii) and (c) because the Bank did not employ a commercially reasonable security procedure  
12 pursuant to California Commercial Code Section 11202.

13 190. Plaintiff asserts the Bank did not employ a commercially reasonable security procedure as  
14 required by California Commercial Code Section 11202 for the following reasons:

- 15 a. The failure by Professional Business Bank to employ and offer to Village View Escrow a  
16 commercially reasonable security system in compliance with the standards set forth by the  
17 FFIEC’s 2005 Guidance, the FFIEC’s 2006 FAQs, the FDIC’s FIL-32-2007 and the FDIC’s  
18 2009 Special Alert;
- 19 b. The failure by Professional Business Bank to abide by the terms of the “Professional  
20 Business Bank Funds Transfer Agreement” dated July 23, 2008 executed by and between  
21 Professional Business Bank and Village View;
- 22 c. The failure by Professional Business Bank to abide by the terms of the “Professional  
23 Business Bank Funds Transfer Agreement” dated September 3, 2008 executed by and  
24 between Professional Business Bank and Village View;
- 25 d. The failure by Professional Business Bank to abide by the terms of the “Professional  
26 Business Bank Funds Transfer Agreement and Authorization” dated November 3, 2008  
27 executed by and between Professional Business Bank and Village View; and
- 28 e. The failure by Professional Business Bank to abide by the terms of the “Professional

1 Business Bank Funds Transfer Agreement and Authorization” dated March 4, 2009 executed  
2 by and between Professional Business Bank and Village View.

3  
4 **FAILURE BY PROFESSIONAL BUSINESS BANK TO EMPLOY AND OFFER TO VILLAGE**  
5 **VIEW ESCROW A COMMERCIALY REASONABLE SECURITY SYSTEM IN**  
6 **COMPLIANCE WITH THE STANDARDS SET FORTH BY THE FFIEC’S 2005 GUIDANCE,**  
7 **THE FFIEC’S 2006 FAQs, THE FDIC’S FIL-32-2007 AND THE FDIC’S 2009 SPECIAL ALERT**

8 191. Plaintiff is informed and believes and thereupon alleges that the fraudulent wire transfers  
9 were caused by Professional Business Bank because the Bank failed to employ and offer to Village View  
10 Escrow a commercially reasonable security system in compliance with the standards set forth by the  
11 FFIEC’s 2005 Guidance, the FFIEC’s 2006 FAQs, the FDIC’s FIL-32-2007 and the FDIC 2009 Special  
12 Alert.

13 192. Plaintiff asserts that Professional Business Bank represented to Village View Escrow  
14 through its written and verbal statements that Professional Business Bank possessed superior, unique,  
15 current and “state of the art” banking systems, and that the Bank abided by the standards set forth by the  
16 regulatory agencies (including the FFIEC and the FDIC) which governed the Bank.

17 193. Plaintiff asserts that Professional Business Bank represented to Village View Escrow  
18 through its written and verbal statements that Professional Business Bank it employed a multifactor  
19 authentication security system for its online banking transactions.

20 194. Plaintiff asserts the Bank did not employ a commercially reasonable security procedure as  
21 required by California Commercial Code Section 11202(b)(i)-(ii) and (c) because it failed to offer,  
22 employ, implement or maintain a multifactor authentication system as it represented it did.

23 195. Plaintiff asserts the Bank did not employ a commercially reasonable security procedure as  
24 required by California Commercial Code Section 11202(b)(i)-(ii) and (c) because it failed to abide by and  
25 employ the standards set forth by the FFIEC’s 2005 Guidance, the FFIEC’s 2006 FAQs, the FDIC’s FIL-  
26 32-2007 and the FDIC 2009 Special Alert as it represented it did.

27  
28 196. Plaintiff asserts that Professional Business Bank is liable for the fraudulent wire transfers

1 of March 16-17, 2010 described herein under the provisions of California Commercial Code section  
2 11202(b)(i) and (c) because the Bank failed to abide by and employ the standards set forth by the  
3 FFIEC's 2005 Guidance, the FFIEC's 2006 FAQs, the FDIC's FIL-32-2007 and the FDIC 2009 Special  
4 Alert as it represented it did.

5  
6 **FAILURE TO ABIDE BY THE SECURITY PROCEDURES**  
7 **SELECTED BY VILLAGE VIEW ESCROW**  
8 **IN ITS JULY 23, 2008 CONTRACT**

9 197. Plaintiff is informed and believes and thereupon alleges that the fraudulent wire transfers  
10 were caused by Professional Business Bank because the Bank failed to abide by the terms of the July 23,  
11 2008 "Professional Business NetTeller Online BusinessBanking (Corporate)" agreement.

12 198. On or about July 23, 2008 Village View Escrow entered into a contract ("Professional  
13 Business Bank Funds Transfer Agreement") with Professional Business Bank wherein Village View  
14 Escrow agreed to abide by three types of agreements including "Funds Transfer Agreement(s)" as  
15 provided in provision 1(iii) of the agreement.

16 199. In executing (1) the "Professional Business Bank NetTeller Online BusinessBanking  
17 (Corporate)" agreement of July 23, 2008; (2) the "Professional Business Bank Funds Transfer  
18 Agreement" of September 3, 2008, (3) the "Professional Business Bank Funds Transfer Agreement and  
19 Authorization" of November 3, 2008, (4) the "Professional Business Bank Funds Transfer Agreement  
20 and Authorization" of March 4, 2009, Village View Escrow justifiably, reasonably and detrimentally  
21 relied on the representations made by Professional Business Bank that their funds would be processed  
22 and transferred by the Bank under the specific terms specified in each of the agreements pursuant to the  
23 July 23, 2008 contract provision 1(iii).

24 200. In contradiction and violation of the July 23, 2008 contract provision 1 (iii), Professional  
25 Business Bank has wrongfully failed to acknowledge the validity and existence of all of the Funds  
26 Transfer Agreements executed between the Bank and Village View Escrow as they applied to the March  
27 16-17, 2010 fraudulent wire transfers.

28 201. In contradiction and violation of the July 23, 2008 contract provision 1 (iii), Professional

1 Business Bank has wrongfully claimed only select agreements were valid and applicable to the March  
2 16-17, 2010 fraudulent wire transfers.

3 202. Plaintiff asserts the Bank did not employ a commercially reasonable security procedure as  
4 required by California Commercial Code Section 11202(b)(i) and (c) because it failed to incorporate the  
5 security procedures selected by Village Escrow in each and every of the following contracts: (1) the  
6 “Professional Business Bank NetTeller Online BusinessBanking (Corporate)” agreement of July 23,  
7 2008; (2) the “Professional Business Bank Funds Transfer Agreement” of September 3, 2008, (3) the  
8 “Professional Business Bank Funds Transfer Agreement and Authorization” of November 3, 2008, (4)  
9 the “Professional Business Bank Funds Transfer Agreement and Authorization” of March 4, 2009.

10 203. Plaintiff asserts that Professional Business Bank is liable for the fraudulent wire transfers  
11 of March 16-17, 2010 described herein under the provisions of California Commercial Code section  
12 11202(b)(i) and (c) because the Bank failed to incorporate the security procedures selected by Village  
13 Escrow in each and every contract enumerated above.

14 **FAILURE TO ABIDE BY THE SECURITY PROCEDURES**  
15 **SELECTED BY VILLAGE VIEW ESCROW**  
16 **IN ITS SEPTEMBER 3, 2008 CONTRACT**

17 204. Plaintiff is informed and believes and thereupon alleges that the fraudulent wire transfers  
18 were caused by Professional Business Bank because the Bank failed to abide by the terms of the  
19 September 3, 2008 “Professional Business Bank Funds Transfer Agreement”.

20 205. On or about September 3, 2008 Village View Escrow entered into a contract  
21 (“Professional Business Bank Funds Transfer Agreement”) with Professional Business Bank wherein  
22 Village View Escrow agreed to conduct funds transfers under certain agreed upon security procedures  
23 including the following:

24 a. “Option Two” which “ requires segregation of the create/release duties (‘dual  
25 controls’), with one User creating Requests and a second User responsible for review and release of the  
26 Request to the Bank” as referenced in “Schedule A-Security Procedures” of the contract; and

27 b. Two designated “Authorized Representatives” from Village View Escrow who are  
28 “authorized to provide Requests to the Bank” which entitles Professional Business Bank to rely on any

1 written communication “believed by [the Bank] in good faith to be genuine and to have been signed by  
2 an authorized representative” as referenced in “Schedule B-Authorized Representatives” of the contract;

3 206. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
4 failed to abide by the security procedures selected by Village View Escrow in the September 3, 2008  
5 Agreement in the handling of the March 16-17, 2010 wire transfer orders because the Bank did not  
6 segregate the create/release duties (dual controls) with authorized users creating the requests for payment  
7 orders from the Bank and authorized users allowing for the review and release of the payment requests  
8 from the Bank as required by the September 3, 2008 Agreement at “Schedule A-Security Procedures”.

9 207. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
10 failed to abide by the security procedures selected by Village View Escrow in the September 3, 2008  
11 Agreement in the handling of the March 16-17, 2010 wire transfer orders because the wire transfer orders  
12 were not signed by the designated “Authorized Representatives” from Village View Escrow as required  
13 by the September 3, 2008 Agreement at “Schedule B-Authorized Representatives”.

14 208. Plaintiff asserts that Professional Business Bank is liable for the fraudulent wire transfers  
15 of March 16-17, 2010 described herein under the provisions of California Commercial Code section  
16 11202(b)(i) and (c) because the Bank failed to incorporate the security procedures selected by Village  
17 View Escrow in Schedule A and Schedule B of the September 2, 2008 contract.

18 **FAILURE TO ABIDE BY THE SECURITY PROCEDURES**  
19 **SELECTED BY VILLAGE VIEW ESCROW**  
20 **IN ITS NOVEMBER 3, 2008 CONTRACT**

21 209. Plaintiff is informed and believes and thereupon alleges that the fraudulent wire transfers  
22 were caused by Professional Business Bank because the Bank failed to abide by the terms of the  
23 November 3, 2008 “Professional Business Bank Funds Transfer Agreement and Authorization”.

24 210. On or about November 3, 2008 Village View Escrow entered into a contract entitled  
25 “Professional Business Bank Funds Transfer Agreement and Authorization” with Professional Business  
26 Bank wherein Village View Escrow agreed to conduct funds transfers under certain agreed upon  
27 additional and supplemental security procedures including the following:

- 28 a. Authorization and confirmation of funds transfers by email from a specific Village

1 View Escrow email address specified in the November 3, 2008 Agreement;

2 b. Authorization and confirmation of funds transfers from two named employees at  
3 Village View Escrow identified and specified in the November 3, 2008 Agreement.

4 211. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
5 failed to abide by the security procedures selected by Village View Escrow in the September 3, 2008  
6 Agreement in the handling of the March 16-17, 2010 wire transfer orders because the wire transfer orders  
7 were not communicated to Professional Business Bank by the specific email address designated by  
8 Village View Escrow in the November 3, 2008 Agreement.

9 212. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
10 failed to abide by the security procedures selected by Village View Escrow in the November 3, 2008  
11 Agreement in the handling of the March 16-17, 2010 wire transfer orders because the wire transfer order  
12 were not authorized and confirmed by either of the two named employees at Village View Escrow  
13 identified and specified in the November 3, 2008 Agreement.

14 213. Plaintiff asserts that Professional Business Bank is liable for the fraudulent wire transfers  
15 of March 16-17, 2010 described herein under the provisions of California Commercial Code section  
16 11202(b)(i) and (c) because the Bank failed to incorporate the security procedures selected by Village  
17 View Escrow in of the September 3, 2008 contract.

18 **FAILURE TO ABIDE BY THE SECURITY PROCEDURES**  
19 **SELECTED BY VILLAGE VIEW ESCROW**  
20 **IN ITS MARCH 4, 2009 CONTRACT**

21 214. Plaintiff is informed and believes and thereupon alleges that the fraudulent wire transfers  
22 were caused by Professional Business Bank because the Bank failed to abide by the terms of the March  
23 4, 2009 "Professional Business Bank Funds Transfer Agreement and Authorization".

24 215. On or about March 4, 2009 Village View Escrow entered into an additional contract  
25 entitled "Professional Business Bank Funds Transfer Agreement and Authorization" with Professional  
26 Business Bank wherein Village View Escrow agreed to conduct funds transfers under certain agreed  
27 upon additional and supplemental security procedures including the following:

28 a. Authorization and confirmation of receipt of a payment order by "call back" from

1 specific Village View Escrow telephone numbers specified in the March 4, 2009 Agreement;

2 b. Authorization and confirmation of receipt of a payment order by “call back” to two  
3 named employees at Village View Escrow identified and specified in the March 4, 2009 Agreement.

4 216. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
5 failed to abide by the security procedures selected by Village View Escrow in the March 4, 2009  
6 Agreement in the handling of the March 16-17, 2010 wire transfer orders because the wire transfer orders  
7 were not confirmed by Professional Business Bank by a “call back” to specific Village View Escrow  
8 telephone numbers specified in the March 4, 2009 Agreement.

9 217. Plaintiff asserts that Professional Business Bank is liable for the fraudulent wire transfers  
10 of March 16-17, 2010 described herein under the provisions of California Commercial Code section  
11 11202(b)(i) and (c) because the Bank failed to incorporate the security procedures selected by Village  
12 View Escrow in of the March 4, 2009 contract.

13 218. Village View Escrow contends that because the security measures selected by Village  
14 View Escrow to prevent fraudulent wire transfers were not employed by Professional Business Bank, the  
15 Bank did not employ a commercially reasonable method of providing security against unauthorized  
16 payment orders under California Commercial Code section 11202(b).

17 219. Village View Escrow contends that the March 16-17, 2010 fraudulent wire transfers were  
18 unenforceable payment order under California Commercial Code section 11203 and should be fully  
19 refunded to Village View Escrow with interest under California Commercial Code section 11204.

20 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

21 **FIFTH CAUSE OF ACTION**  
22 **AGAINST DEFENDANT PROFESSIONAL BUSINESS BANK**  
23 **PURSUANT TO SECTIONS 11202(b)(i) OF THE**  
24 **CALIFORNIA COMMERCIAL CODE**  
25 **(GOOD FAITH)**

26 220. Plaintiff incorporates its general and previous allegations, and all of them, as though fully  
27 alleged in this cause of action.

28 221. Plaintiff asserts that the fraudulent wire transfers of March 16-17, 2010 come under the  
governance of California Commercial Code Division 11 section 11104 “Funds Transfer”.

1 222. California Commercial Code Division 11 section 11100 et seq. applies to Funds Transfers.  
2 California Commercial Code section 11202 concerns authorization and verified payment orders.

3 223. California Commercial Code section 11203 concerns the unenforceability of payment  
4 orders.

5 224. California Commercial Code section 11204 concerns the refund of payment on a payment  
6 order.

7 225. Plaintiff asserts that Professional Business Bank is liable for the fraudulent wire transfers  
8 of March 16-17, 2010 described herein under the provisions of California Commercial Code Section  
9 11202(b)(ii) because the Bank did not accept the payment orders in good faith.

10 226. Plaintiff asserts the Bank did not accept the March 16-17, 2010 payment orders in good  
11 faith as required by California Commercial Code Section 11202 for the following reasons:

12 a. The Bank failed to incorporate the security procedures selected by Village Escrow in each  
13 and every of the following contracts: (1) the “Professional Business Bank NetTeller Online  
14 BusinessBanking (Corporate)” agreement of July 23, 2008; (2) the “Professional Business  
15 Bank Funds Transfer Agreement” of September 3, 2008, (3) the “Professional Business  
16 Bank Funds Transfer Agreement and Authorization” of November 3, 2008, (4) the  
17 “Professional Business Bank Funds Transfer Agreement and Authorization” of March 4,  
18 2009.

19 b. The failure by Professional Business Bank to observe reasonable commercial standards of  
20 fair dealing;

21 c. The failure by Professional Business Bank and its agents to protect against “red flag”  
22 indicators of wire transfer fraud in February 2010 as follows:

23 a. Professional Business Bank failure to report the third party attempt to break into, or  
24 hack into, Village View Escrow’s account at Professional Business Bank in February  
25 2010 to Village View Escrow so that Village View Escrow could take necessary steps  
26 to guard against fraud and theft;

27 b. Professional Business Bank failure to report the third party attempt to break into, or  
28 hack into, Village View Escrow’s account at Professional Business Bank in February

1 2010 to any law enforcement agency so that the law enforcement agency could take  
2 necessary steps to guard against fraud and theft.

3 c. Professional Business Bank failure to report the third party attempt to break into, or  
4 hack into, Village View Escrow's account at Professional Business Bank in February  
5 2010 to any security representative within Professional Business Bank so that the  
6 Bank could take necessary steps to guard against fraud and theft;

7 d. Professional Business Bank failure to report the third party attempt to break into, or  
8 hack into, Village View Escrow's account at Professional Business Bank in February  
9 2010 to any appropriate authority in an effort to conceal the inadequacies of  
10 Professional Business Bank's unsafe and unsound banking practices and its unsafe  
11 online banking system.

12 d. The failure by Professional Business Bank and its agents to detect "red flag" indicators of  
13 wire transfer fraud on March 16-17, 2010 as follows:

14 a. Unlike the established business practices between Village View Escrow and  
15 Professional Business Bank, the fraudulent wire transfer orders lacked  
16 distinguishable and verifiable addresses for the individual recipients of their wire  
17 funds transfers such that the individual recipients possessed the same address as the  
18 bank/financial institution recipients;

19 b. Unlike the established business practices between Village View Escrow and  
20 Professional Business Bank, the fraudulent wire transfer orders lacked  
21 distinguishable and verifiable addresses for the bank/financial institution recipients of  
22 their wire funds transfers such that the bank/financial institution recipients possessed  
23 the same address as the individual recipients;

24 c. Unlike the established business practices between Village View Escrow and  
25 Professional Business Bank in which there were no more than 2-3 wire transfer order  
26 per day, there were 10 wire transfer orders on March 16, 2010 and 16 wire transfer  
27 orders on March 17, 2010;

28 d. Unlike the established business practices between Village View Escrow and

1 Professional Business Bank, there were numerous fraudulent wire transfer orders  
2 which contained the exact same date/time stamp which was impossible for Village  
3 View Escrow to do because its capabilities permitted only one wire transfer order at a  
4 time.

- 5 e. Unlike the established business practices between Village View Escrow and  
6 Professional Business Bank , there was a fraudulent wire transfer order which in no  
7 way related to the business of real estate and escrow but rather for “financial aid”.
- 8 f. Unlike the established business practices between Village View Escrow and  
9 Professional Business Bank , the fraudulent wire transfer orders contained incoherent  
10 addresses for individual recipients and banks including some which listed:
- 11 i. no street address at all
  - 12 ii. two cities and two states for a singular address
  - 13 iii. the same name as prior recipient but different addresses
  - 14 iv. notations on the orders that made no sense
- 15 b. Unlike the established business practices between Village View Escrow and  
16 Professional Business Bank, the fraudulent wire transfer orders included multiple wire  
17 transfers to the same individual recipient.

18 227. Village View Escrow contends that because the security measures selected by Village  
19 View Escrow to prevent fraudulent wire transfers were not employed by Professional Business Bank, the  
20 Bank did not accept the payment orders in good faith under California Commercial Code section  
21 11202(b).

22 228. Village View Escrow contends that because Professional Business Bank failed to detect  
23 and guard against “red flag” indicators of fraud both before March 16-17, 2010 and on March 16-17,  
24 2010, the Bank did not accept the payment orders in good faith under California Commercial Code  
25 section 11202(b).

26 229. Village View Escrow contends that because the security measures to prevent fraudulent  
27 wire transfers employed by Professional Business Bank were not accepted in good faith as described  
28 above under California Commercial Code section 11202, those fraudulent wire transfers were

1 unenforceable payment orders under California Commercial Code section 11203 and should be fully  
2 refunded to Village View Escrow under California Commercial Code section 11204.

3 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

4 **SIXTH CAUSE OF ACTION**  
5 **AGAINST DEFENDANT PROFESSIONAL BUSINESS BANK FOR**  
6 **NEGLIGENCE**

7 230. Plaintiff incorporates its general and previous allegations, and all of them in paragraphs 1  
8 through 229, as though fully alleged in this cause of action.

9 231. Village View Escrow contends that Professional Business Bank had a duty of due care  
10 owed Village View Escrow which required the Bank to act reasonably and in good faith at all time  
11 during its banking relationship.

12 232. Village View Escrow contends that Professional Business Bank had a duty of due care  
13 owed to Village View Escrow which required the Bank to act in compliance with reasonable industry  
14 standards of business practice and fair dealing.

15 233. Village View Escrow contends that Professional Business Bank breached its duty of due  
16 care owed to Village View Escrow which required the Bank to act reasonably and in compliance with  
17 reasonable industry standards of business practice and fair dealing when the Bank failed to act reasonably  
18 in the recovery of the stolen money from Village View Escrow's account on and after March 18, 2010.

19 234. Village View Escrow promptly contacted Professional Business Bank on March 18, 2010  
20 to report the wire transfer fraud incidents which occurred on March 16-17, 2010 as described herein.

21 235. On March 18, 2010 Village View Escrow urgently requested Professional Business  
22 Bank's immediate assistance in the recovery of the stolen funds.

23 236. On March 18, 2010 Village View Escrow informed Professional Business Bank that  
24 Village View Escrow's prompt recovery of the stolen funds was essential to Village View Escrow's  
25 survival as a small business.

26 237. On March 18, 2010 Village View Escrow informed Professional Business Bank that  
27 Village View Escrow's prompt recovery of the stolen funds was essential to Village View Escrow's  
28 licensing with the State.

1           239. Village View Escrow contends that Professional Business Bank and its agents including  
2 Laura Westbrook and Virginia Wright knew, or should have known, how to immediately proceed with  
3 the recovery of the stolen funds from Village View Escrow's account on March 18, 2010 due to their  
4 training, experience and expertise in banking and funds transfers.

5           240. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
6 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
7 recovery of the stolen funds.

8           241. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
9 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
10 recovery of the stolen funds because the Bank failed to have a prepared procedure for the recovery of  
11 stolen funds despite numerous warnings from the FFIEC and the FDIC of the prevalence of the same.

12           242. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
13 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
14 recovery of the stolen funds because Village View Escrow was placed on "hold" for an excessively long  
15 time after reporting the incident to the Bank.

16           243. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
17 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
18 recovery of the stolen funds because Village View Escrow's regular contact at the Bank (the Wire  
19 Transfer Manager) failed to timely advise Village View Escrow as to how to proceed with the recovery  
20 of stolen wire transfer funds.

21           244. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
22 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
23 recovery of the stolen funds because Village View Escrow's regular contact at the Bank requested time  
24 to investigate and informed Village View Escrow they would call Village View Escrow back "soon"  
25 instead of immediately providing access to information concerning the fraudulent wire transfers.

26           245. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
27 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
28 recovery of the stolen funds because the Bank waited excessive amount of time to call Village View

1 Escrow back while it internally dealt with the fraudulent wire transfers.

2 246. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
3 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
4 recovery of the stolen funds because after the initial call with the Bank to report the incident, the Bank  
5 refused to allow Village View Escrow to speak with their regular contact at the Bank who the Bank  
6 reported was suddenly "on vacation" thereby causing unnecessary delay and confusion.

7 247. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
8 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
9 recovery of the stolen funds because in an effort to protect itself from liability, the Bank refused to allow  
10 Village View Escrow to speak to any representative of the Bank without a third party present thereby  
11 causing unnecessary delay and confusion.

12 248. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
13 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
14 recovery of the stolen funds because in an effort to protect itself from liability, the Bank appointed a new  
15 bank representative unfamiliar with Village View Escrow to "handle" the incident thereby causing  
16 unnecessary delay and confusion.

17 249. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
18 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
19 recovery of the stolen funds because after Village View Escrow requested the immediate provision of  
20 information about the destinations where the funds were sent, the Bank failed to respond promptly.

21 250. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
22 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
23 recovery of the stolen funds because by the time the Bank provided Village View Escrow with the  
24 information repeatedly requested by Village View Escrow, the majority of stolen funds had been  
25 irretrievably dispersed.

26 251. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
27 negligently responded to Village View Escrow's urgent requests for guidance and assistance in the  
28 recovery of the stolen funds because the Bank focused on attempting to retrieve the stolen funds from

1 other financial institutions and not directly from individuals known as recipient “mules”.

2 252. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
3 negligently responded to Village View Escrow’s urgent requests for guidance and assistance in the  
4 recovery of the stolen funds because the Bank waited days and weeks for return phone calls from other  
5 financial institutions involved in the incident while the majority of stolen funds had been irretrievably  
6 dispersed by the individuals knows as recipient “mules”.

7 253. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
8 negligently responded to Village View Escrow’s urgent requests for guidance and assistance in the  
9 recovery of the stolen funds because Village View Escrow, who lacked any expertise in banking and/or  
10 wire transfer fraud, was primarily responsible for post the incident recovery of the a small percentage of  
11 the stolen funds.

12 254. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
13 negligently responded to Village View Escrow’s urgent requests for guidance and assistance in the  
14 recovery of the stolen funds because the Bank, who professed to possess expertise in banking, in working  
15 with regulatory agencies and who received training in wire transfers and wire transfer fraud, failed in its  
16 recovery of stolen funds taken from Village View Escrow’s account.

17 255. Plaintiff is informed and believes and thereupon alleges that Professional Business Bank  
18 prevented Village View Escrow from promptly recovering dispersed funds through its negligently  
19 handling of the recovery of the stolen funds.

20 256. Plaintiff is informed and believes and thereupon alleges that had Professional Business  
21 Bank provided Village View Escrow with reasonable assistance, Village View would have been able to  
22 recover all or a large portion of the funds stolen from its account at the Bank.

23 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

24 **PRAYER**

25 WHEREFORE, VILLAGE VIEW ESCROW seeks judgment against Defendant  
26 PROFESSIONAL BUSINESS BANK as follows:

27 1. For damages in the amount of monthly banking fees and bank-related fees paid by Village  
28 View Escrow to Professional Business Bank from 2008 until 2010;

2. For damages in the amount of \$465,555.97 resulting from the March 16-17, 2010 fraudulent wire transfers;
3. For damages including loan penalties stemming;
4. For interest pursuant California Commercial Code section 11204;
5. For pre-judgment interest at the highest lawful legal rate from March 16, 2010 to present which will continue to accrue on a monthly basis until payment is collected;
6. For post-judgment interest at the highest lawful legal rate from the date of judgment until payment is collected;
7. For punitive damages for Defendant Professional Business Banks' fraudulent and intentional conduct;
8. For reasonable attorneys' fees and costs;
9. For such other and further relief as the court may deem just and proper.

Dated: June 27, 2011

HINES SMITH CARDER DINCEL BLAND

By: 

Kim O. Dincel  
Julie Bonnel-Rogers  
Attorneys for Plaintiff  
VILLAGE VIEW, INC.