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EFFICIENT SERVICES ESCROW GROUP

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**
13 **CENTRAL JUSTICE CENTER**

15 PETER A. DAVIDSON, Receiver for EFFICIENT
SERVICES ESCROW GROUP,

16 Plaintiff

17 vs.

18 FIRST FOUNDATION BANK, a California
19 corporation; BENTSON, VUONA AND
WESTERSTEN, LLP; and DOES 1-50 inclusive,

20 Defendants

Case No. 30-2013-00691661-CU-MC-CJC

PLAINTIFF, PETER A. DAVIDSON, RECEIVER
FOR EFFICIENT SERVICES ESCROW
GROUP'S FIRST AMENDED COMPLAINT
FOR DAMAGES FOR:

- 21 1. BREACH OF STATUTORY DUTY:
CALIFORNIA COMMERCIAL CODE SECTION
22 11202 –COMMERCIAL REASONABLENESS
OF SECURITY PROCEDURES;
- 23 2. BREACH OF STATUTORY DUTY:
CALIFORNIA COMMERCIAL CODE SECTION
24 11202 –GOOD FAITH ACCEPTANCE OF
PAYMENT ORDERS; AND
- 25 3. FRAUD, MALICE, OPPRESSION
- 26 4. CORPORATE DEFAMATION
- 27 5. NEGLIGENCE
- 28 6. BREACH OF CONTRACT
7. BREACH OF FIDUCIARY DUTY

1 Plaintiff, PETER A. DAVIDSON, Receiver for EFFICIENT SERVICES ESCROW GROUP, a
2 California Corporation, complains of defendants, FIRST FOUNDATION BANK, a California
3 corporation, and BENTSON, VUONA AND WESTERSTEN, LLP, and Does 1 through 50, inclusive
4 (collectively "Defendants"), as follows:
5

6 **GENERAL ALLEGATIONS**
7

8 1. Peter A. Davidson is the duly appointed and acting receiver for Efficient Services Escrow Group,
9 ("Receiver") having been appointed pursuant to an order issued by the Orange County Superior Court in
10 Case No.: 30-2013-00639413-CU-PT-CJC, The People of the State of California, By and Through the
11 Commissioner of Corporations of the State of California v. Efficient Services Escrow Group, on July 2,
12 2013.

13 2. EFFICIENT SERVICES ESCROW GROUP ("EFFICIENT") is, and at all times herein
14 mentioned was, a corporation duly licensed, organized and existing under and by virtue of the laws of the
15 State of California, and authorized to conduct business in Orange County, California and licensed under
16 the California Department of Business Oversight (formerly known as the Department of Corporations,
17 hereinafter referred to as "DEPARTMENT OF CORPORATIONS").

18 3. Plaintiff is informed and believes, and on such information and belief alleges, that FIRST
19 FOUNDATION BANK ("BANK") is, and at all times herein mentioned was, a corporation duly
20 organized and existing under and by virtue of the laws of the State of California, licensed to operate and
21 regulated as a bank, and authorized to conduct business in Orange County, California.

22 4. Plaintiff is informed and believes, and on such information and belief alleges, that BENTSON,
23 VUONA AND WESTERSTEN, LLP ("ACCOUNTANT") is, and at all times herein mentioned was, a
24 limited liability partnership of accountants who specialized in accounting and conducted business in
25 Orange County, California. At all times mentioned herein ACCOUNTANT was and is composed of
26 certified public accountants, duly licensed by the California State Board of Accounting to practice their
27 profession in California and practicing same in Orange County, California.

28 5. Plaintiff is unaware of the true names and capacities of defendants, DOES 1 through 50,
inclusive, and each of them, and therefore sues said defendants, and each of them, by such fictitious

1 names. Plaintiff shall amend this complaint to allege the true names and capacities of said defendants,
2 and each of them, once they have been ascertained.

3 6. At all times relevant to the facts and issues raised herein, BANK did specialize, and was an
4 expert in banking, online banking and the safekeeping of money.

5 7. At all times relevant to the facts and issues raised herein, ACCOUNTANT, did specialize, and
6 was an expert, in escrow accounting.

7 8. In or around March 2010 EFFICIENT began a banking relationship with BANK. EFFICIENT, at
8 all times mentioned herein, maintained bank accounts, including trust accounts held by EFFICIENT in
9 trust for their clients and customers, with BANK, and executed a Cash Management Agreement with
10 BANK. Said Cash Management Agreement is attached hereto as Exhibit A.

11 9. As part of the banking services provided by BANK, EFFICIENT had the ability to send, and from
12 time to time did send, domestic wire transfer payment orders electronically through BANK.

13 10. In April 2011 the Federal Bureau of Investigation (“FBI”) issued a “Fraud Alert Involving
14 Unauthorized Wire Transfers to China” (“FBI Wire Fraud Alert”) where it warned that cyber criminals
15 were using compromised online banking credentials of U.S. businesses to send unauthorized wire
16 transfers to China. Said FBI Wire Fraud Alert is attached hereto as Exhibit B.

17 11. The FBI Wire Fraud Alert stated the unauthorized wires were being sent to economic and trade
18 companies located in the Heilongjiang province in the People’s Republic of China. The FBI Wire Fraud
19 Alert advised that suspect wires included the words “economic and trade”, “trade” or “LTD” in their
20 names. The FBI Wire Fraud Alert advised that the funds were being sent to, among other banks, the
21 Industrial and Commercial Bank of China.

22 12. The FBI Wire Fraud Alert made the following recommendation to financial institutions: “Wire
23 activity destined for the Chinese cities of Raohe, Fuyuan, Jixi City, Xunke, Tongjian, and Dongning
24 should be heavily scrutinized, especially for clients that have no prior transaction history with companies
25 in the Heilongjiang province.”

26 13. The FBI Wire Fraud Alert was picked up, rebroadcast and widely disseminated by various news
27 agencies and other organizations including but not limited to CNN, NBC and the Better Business Bureau.
28

1 14. As part of the banking services provided by BANK, EFFICIENT did not have the ability to send,
2 and never did send, international wire transfer payment orders electronically through BANK or its online
3 banking website.

4 15. Plaintiff is informed and believes, and on that basis alleges in or around August 2012, BANK
5 began conversion to a new online banking services vendor. This conversion required the execution of
6 new agreements, authorizations and online banking documents between BANK and its customers
7 including EFFICIENT. BANK did not offer EFFICIENT the option of maintaining its existing accounts
8 in the custom and practice with which it had become familiar and instead mandated that EFFICIENT
9 convert its accounts to accommodate the new online banking vendor or cease banking with BANK.

10 16. Plaintiff is informed and believes, and on that basis alleges that in its haste to convert to a new
11 vendor, BANK did not adequately discuss and explain the conversion of its online security procedures
12 with EFFICIENT.

13 17. Plaintiff is informed and believes, and on that basis alleges that in its haste to convert to a new
14 vendor, BANK did not acquire all requisite agreements, authorizations and online banking documents,
15 including but not limited to signature cards, from EFFICIENT.

16 18. Plaintiff is informed and believes, and on that basis alleges that by September 17, 2012, BANK
17 converted to its new online banking services vendor and shortly thereafter, BANK customers began to
18 experience online banking problems and reported those problems to BANK.

19 19. After the September 17, 2012 conversion, BANK received email and telephone calls from
20 EFFICIENT reporting problems with its online banking. BANK did not advise or warn EFFICIENT that
21 it was receiving calls from other BANK customers reporting online banking problems.

22 20. Plaintiff is informed and believes, and on that basis alleges that after the September 17, 2012
23 conversion, BANK was informed by other customers of BANK including, but not limited to, Anthony
24 Copabianco and Copabianco Law Offices, that its online banking was not operating properly.

25 21. In or around September 2012 EFFICIENT met with representatives from ACCOUNTANT
26 including Jack Vuona. EFFICIENT informed ACCOUNTANT that it needed assistance maintaining its
27 general accounting, payroll and escrow accounting, specifically including, but not limited to,
28 reconciliations.

1 22. In or around September 2012 ACCOUNTANT, including Jack Vuona, represented to
2 EFFICIENT that it was a CPA firm specializing in escrow accounting. ACCOUNTANT represented to
3 EFFICIENT that it would do EFFICIENT's general accounting, payroll and escrow accounting in
4 accordance with professional CPA and escrow standards for a flat monthly fee.

5 23. Relying on the representations of ACCOUNTANT, EFFICIENT verbally agreed to transfer
6 from its bookkeeper all of its general accounting, payroll and escrow accounting to ACCOUNTANT and
7 to pay a flat monthly fee for ACCOUNTANT's professional accounting services and advice.

8 24. In or around September 2012 EFFICIENT provided files and documents relating to its general
9 accounting, payroll and escrow accounting to ACCOUNTANT and began to pay its agreed to flat fee for
10 ACCOUNTANT 's professional accounting services and advice. At all times relevant, EFFICIENT
11 continued to pay the agreed upon fee to ACCOUNTANT for professional accounting services and
12 advice.

13 25. Plaintiff is informed and believes that after receipt of files and documents from EFFICIENT,
14 ACCOUNTANT realized that the work it had agreed to do involved more work and time than expected.
15 ACCOUNTANT thereafter failed to perform the professional accounting services it promised to
16 EFFICIENT including, but not limited to, the escrow accounting (reconciliations) for September 2012,
17 October 2012, November 2012, December 2012 and January 2013.

18 26. EFFICIENT contacted ACCOUNTANT numerous times to discuss with increasing urgency the
19 status of the escrow accounting for September 2012, October 2012, November 2012 and December
20 2012 and was repeatedly assured that ACCOUNTANT was working on it. EFFICIENT relied on
21 ACCOUNTANT's representations that the accounting was being done in accordance with professional
22 CPA and escrow standards as promised. At no time did ACCOUNTANT inform EFFICIENT that it
23 could not or would not complete EFFICIENT's escrow accounting.

24 27. Plaintiff is informed and believes and on that basis alleges that between September and
25 December 2012, EFFICIENT contacted BANK numerous times and reported ongoing problems
26 EFFICIENT was experiencing with its online banking and with its wire transfers through BANK's online
27 banking website. BANK was initially non-responsive and slow to respond to EFFICIENT's complaints
28 and requests for assistance.

1 28. Plaintiff is informed and believes and on that basis alleges that in response to EFFICIENT's
2 reports of ongoing problems with its online banking and with its wire transfers through BANK's online
3 banking website, BANK repeatedly assured EFFICIENT that its online banking and tokenization security
4 system was safe and reliable, while ignoring and concealing manifest signs and red flags of security
5 compromise as reported by EFFICIENT and other customers including, but not limited to, Anthony
6 Copabianco and the Copabianco Law Offices.

7 29. Plaintiff is informed and believes and on that basis alleges that in or around September and
8 October 2012, in response to EFFICIENT's reports of ongoing problems with its online banking and
9 with its wire transfers, BANK deactivated EFFICIENT'S tokenization security system used by
10 EFFICIENT to execute online wire transfers and promised to correct the ill-performing tokenization at a
11 later date. When asked if proceeding with wire transfers without the activated tokenization was safe,
12 BANK employee Jimmy Ton assured EFFICIENT that the tokenization problem would be cured
13 promptly and that it was safe to proceed without a fully operable tokenization security system.

14 30. Plaintiff is informed and believes and on that basis alleges that BANK deactivated the
15 tokenization system and falsely promised to promptly fix the problem and to reactivate the tokenization
16 security system. Plaintiff is informed and believes and on that basis alleges that BANK failed to
17 reactivate and/or failed to cure the problems with the tokenization between October 2012 and February
18 2013.

19 31. Plaintiff is informed and believes and on that basis alleges that on December 4, 2012, BANK was
20 informed by Anthony Copabianco and the Copabianco Law Offices that BANK's online banking
21 website security and its tokenization security system had been breached causing \$18,700.00 to go
22 missing from accounts maintained by Anthony Copabianco and the Copabianco Law Offices at BANK.

23 32. Plaintiff is informed and believes and on that basis alleges that as of December 4, 2012, BANK
24 knew or should have known that its tokenization security system had been breached and was susceptible
25 to further breach.

26 33. Plaintiff is informed and believes and on that basis alleges that as of December 4, 2012, BANK
27 failed to advise and warn its customers, including EFFICIENT, of BANK's susceptibility to breach of its
28 online banking system.

1 34. Plaintiff is informed and believes and on that basis alleges that as of December 4, 2012, BANK
2 failed to promptly correct its susceptibility to breach of its online banking token security system or to
3 offer its customers an alternative functioning commercially reasonable security procedure for the
4 protection of its online banking accounts.

5 35. Plaintiff is informed and believes and on that basis alleges that BANK denied liability for the
6 \$18,700.00 security breach loss suffered by Anthony Copabianco and the Copabianco Law Offices by
7 falsely claiming that Anthony Copabianco wrongfully withdrew the funds to finance a Ukranian mail-
8 order girlfriend. Plaintiff is informed and believes and on that basis alleges BANK's false victim-
9 blaming conduct was part of a fraudulent, oppressive, malicious and defamatory campaign against
10 Anthony Copabianco and the Copabianco Law Offices.

11 36. Plaintiff is informed and believes and on that basis alleges that BANK did not properly
12 investigate Anthony Copabianco and the Copabianco Law Offices' reports of security breach and/or
13 cybertheft and failed to rectify its problematic security procedures, implement new procedures or take
14 any additional security measures to prevent future breaches including, but not limited to, the security
15 breaches to which EFFICIENT fell victim to in December 2012 and January 2013.

16 37. On or about December 17, 2012, BANK received an electronic payment order in the amount of
17 \$432,216.00 designated for an international destination (Russia) and purporting to be from EFFICIENT.
18 Said payment order was processed by BANK without the knowledge or consent of EFFICIENT.

19 38. BANK processed the December 17, 2012 in the amount of \$432,216.00 despite receiving
20 Outgoing Wire Detail advisement that the OFAC Status for the wire was "False Positive" and an
21 advisement that the "Default Receiving FI substituted for original Receiving FI information. Original
22 Receiver FI Name not provided." Despite these warning signs and the fact that EFFICIENT had never
23 previously issued any type of wire transfer orders to any international destinations including, but not
24 limited to, Russia, BANK did not appropriately contact EFFICIENT to confirm the legitimacy of the
25 Russia bound wire and instead two BANK employees reviewed and authorized the wrongful release of
26 the same.

27 39. Plaintiff is informed and believes and on that basis alleges that during January 2013
28 ACCOUNTANT advised EFFICIENT that it no longer would perform EFFICIENT's general

1 accounting, payroll and escrow accounting. ACCOUNTANT then returned to EFFICIENT files and
2 documents relating to its general accounting, payroll and escrow accounting.

3 40. Plaintiff is informed and believes and on that basis alleges that when EFFICIENT received the
4 returned files and documents from ACCOUNTANT in January 2013 it realized that ACCOUNTANT
5 had failed to perform the escrow accounting (reconciliations) for September 2012, October 2012,
6 November 2012 and December 2012. As a result, EFFICIENT immediately contacted its former
7 bookkeeper who agreed to perform the escrow accounting which had lapsed while under the care of
8 ACCOUNTANT.

9 41. During January and February 2013 EFFICIENT and its bookkeeper worked to rectify the lapsed
10 escrow accounting beginning with September 2012 and proceeding sequentially through October 2012,
11 November 2012, December 2012 and January 2013.

12 42. On or about January 24, 2013, BANK received another electronic payment order in the amount of
13 \$563,112.00 designated for an international destination (China) and purporting to be from EFFICIENT.
14 Said payment order was processed by BANK without the knowledge or consent of EFFICIENT. The
15 January 24, 2013 payment order of \$563,112.00 was directed to the Industrial and Commercial Bank of
16 China, in the Heilongjiang province in the People's Republic of China, for the benefit on an entity with
17 the word "trade" in its name, as specifically warned of by the FBI Wire Fraud Alert.

18 43. BANK processed the January 24, 2013 in the amount of \$563,112.00 despite receiving
19 advisement on its Outgoing Wire Detail that the "Default Receiving FI substituted for original Receiving
20 FI information." Despite these warning signs and the fact that EFFICIENT had never previously issued
21 any type of wire transfer orders to any international destinations including, but not limited to, China,
22 BANK did not appropriately contact EFFICIENT to confirm the legitimacy of the China bound wire and
23 instead two BANK employees reviewed and authorized the wrongful release of the same.

24 44. On or about January 30, 2013, BANK received another electronic payment order in the amount of
25 \$563,112.00 designated for an international destination (China) and purporting to be from EFFICIENT.
26 Said payment order was again processed by BANK without the knowledge or consent of EFFICIENT.
27 The January 30, 2013 payment order of \$563,112.00 was again directed to the Industrial and Commercial
28

1 Bank of China, in the Heilongjiang province in the People's Republic of China, for the benefit on an
2 entity with the word "trade" in its name, again as specifically warned of by the FBI Wire Fraud Alert.

3 45. BANK processed the January 30, 2013 in the amount of \$563,112.00 despite receiving Outgoing
4 Wire Detail advisement that the "Default Receiving FI substituted for original Receiving FI information.
5 Original Receiver FI Name not provided." Despite these warning signs and the fact that EFFICIENT
6 had never previously issued any type of wire transfer orders to any international destinations including,
7 but not limited to, China, BANK did not appropriately contact EFFICIENT to confirm the legitimacy of
8 the China bound wire and instead two BANK employees reviewed and authorized the wrongful release
9 of the same.

10 46. In January and February 2013 EFFICIENT re-hired and paid its prior bookkeeper, who
11 specialized in escrow bookkeeping, to rectify the escrow accounting for September 2012, October 2012,
12 November 2012 and December 2012 left undone by ACCOUNTANT. In rectifying the overdue
13 accounting, EFFICIENT was informed by its bookkeeper of the December 17, 2012, January 24, 2013
14 and January 30, 2013 fraudulent wire transfers.

15 47. On or about February 22, 2013, within a reasonable time as set forth in California Commercial
16 Code section 11204, EFFICIENT contacted BANK concerning the December 24, 2012, January 24,
17 2013 and January 30, 2013 electronic payment orders as set forth herein. EFFICIENT advised BANK
18 that: (i) it had not sent said payment orders; (ii) it had not authorized said payment orders; and (iii) it had
19 no knowledge of said payment orders.

20 48. Upon being informed that the payment orders were not authorized, BANK initiated an
21 investigation and attempted to recall the three wire transfers. It was successful in recovering the
22 December 17, 2012 wire transfer but not the two January 2013 wire transfers in the amount of One
23 Million One Hundred Twenty Six Thousand Two Hundred Twenty Four and No Cents (\$1,126,224.00).
24 These payment orders are hereinafter referred to as the "Outstanding Orders."

25 49. At all times following EFFICIENT's reporting of the fraudulent wire transfers to BANK, BANK
26 knew that "time was of the essence" so that EFFICIENT could maintain its license and business.

27 50. On February 26, 2013 the DEPARTMENT OF CORPORATIONS issued to EFFICIENT a
28 "Demand to Replace Escrow Trust Account Shortage" wherein EFFICIENT was advised that its escrow

1 license with the DEPARTMENT OF CORPORATIONS was in jeopardy and that if the missing funds
2 were not replaced, administrative action by the DEPARTMENT OF CORPORATIONS would result.
3 Said Demand to Replace Escrow Trust Account Shortage is attached hereto as Exhibit C.

4 51. On February 26, 2013 BANK issued a letter to a representative for EFFICIENT advising that
5 BANK took the report of cyber theft seriously, had already opened an investigation and intended to
6 complete its investigation expeditiously. Said February 26, 2013 BANK letter is attached hereto as
7 Exhibit D.

8 52. In a letter dated February 27, 2013 from a representative for EFFICIENT, BANK was informed
9 about the "Demand to Replace Escrow Trust Account Shortage" issued to EFFICIENT by the
10 DEPARTMENT OF CORPORATIONS and was advised of the urgency of the situation, and the
11 possibility for irreparable harm. Said February 27, 2013 letter is attached hereto as Exhibit E.

12 53. On February 28, 2013 the DEPARTMENT OF CORPORATIONS issued to EFFICIENT an
13 "Order to Discontinue Escrow Activities" prohibiting EFFICIENT from conducting any new business
14 because of its trust account shortage at BANK. A copy of said Order to Discontinue Escrow Activities is
15 attached hereto as Exhibit F.

16 54. On February 28, 2013 the DEPARTMENT OF CORPORATIONS issued to BANK a letter
17 ordering BANK to "Refrain from disbursing any funds or property" from EFFICIENT's trust accounts at
18 said BANK. Upon receiving this letter, BANK knew and understood what the ramifications of its
19 investigation of the Outstanding Orders would have on EFFICIENT's license and business. A copy of
20 said letter is attached hereto as Exhibit G.

21 55. On February 28, 2013 Chief Operating Officer Tony Schwarz promised to EFFICIENT via email
22 that BANK would complete its investigation in no more than two days and would advise of the outcome
23 of the investigation by March 1 or 2, 2013. Said February 28, 2013 email from Chief Operating Officer
24 Tony Schwarz is attached hereto as Exhibit H; see also Exhibit D.

25 56. Plaintiff is informed and believes and on that basis alleges that EFFICIENT relied on BANK's
26 promise to EFFICIENT that BANK would complete its investigation of the Outstanding Orders by
27 March 1 or 2, 2013. In reliance on the representation of BANK, EFFICIENT reported to the
28

1 DEPARTMENT OF CORPORATIONS that the shortage of funds would likely be reconciled by March
2 1 or 2, 2013.

3 57. On February 28, 2013 BANK Chief Operating Officer Tony Schwarz advised EFFICIENT via
4 email that BANK intended to cease any and all banking relationships with EFFICIENT regardless of the
5 outcome of the investigation and that EFFICIENT would have approximately 10 days to close the
6 banking relationship it had with BANK. Said February 28, 2013 email is attached hereto as Exhibit H.
7 Plaintiff is informed and believes and on that basis alleges that said advisement was designed to oppress
8 and to injure EFFICIENT and to prevent EFFICIENT from recovering the lost funds from BANK.

9 58. On March 4, 2013 in an email from a representative of BANK, said BANK wrongfully denied
10 that it ever promised to complete its investigation by March 1 or 2, 2013. Said email is attached hereto
11 as Exhibit I.

12 59. BANK issued an Incident Report to EFFICIENT, the DEPARTMENT OF CORPORATIONS
13 and other third parties on and after March 7, 2013 wherein BANK denied responsibility and coverage for
14 the Outstanding Orders. A copy of said Incident Report is attached hereto as Exhibit J.

15 60. On March 8, 2013 EFFICIENT was ordered by the DEPARTMENT OF CORPORATIONS to
16 close its business operations. As a result, EFFICIENT's employees became unemployed and
17 EFFICIENT ceased operations.

18 61. Plaintiff is informed and believes and thereon alleges that based upon fraudulent, malicious,
19 oppressive and defamatory information provided by BANK indicating that the Outstanding Orders were
20 the result of internal fraud on the part of EFFICIENT, the DEPARTMENT OF CORPORATIONS and
21 other law enforcement agencies including the Huntington Beach Police initiated further administrative,
22 civil and criminal investigations of EFFICIENT and its employees in the aftermath of the fraudulent wire
23 transfers.

24 62. Plaintiff is informed and believes and thereon alleges that the further administrative, civil and
25 criminal investigations of EFFICIENT and its employees in the aftermath of the fraudulent wire
26 transfers by the DEPARTMENT OF CORPORATIONS and other law enforcement agencies including
27 the Huntington Beach Police indicated that the Outstanding Orders were not the result of internal fraud
28

1 on the part of EFFICIENT, but rather the result of an online banking security compromise by an outside
2 unknown third party .

3 63. As of the date of this complaint, the December 17, 2012 unauthorized fraudulent payment order
4 in the amount of in the amount of \$432,216.00 has been recovered. The two unauthorized fraudulent
5 payment orders (the January 24, 2013 payment order in the amount of \$563,112.00 and the January 30,
6 2013 payment order in the amount of \$563,112.00), amounting to One Million One Hundred Twenty Six
7 Thousand Two Hundred Twenty Four and No Cents (\$1,126,224.00) have not been recovered and
8 remain outstanding.

9 64. The Outstanding Orders were not authorized by EFFICIENT or EFFICIENT's agents, and were
10 processed without EFFICIENT's knowledge or consent, BANK was first advised of the same within a
11 reasonable time as set forth in California Commercial Code section 11204 on or about February 22,
12 2013.

13 65. Despite the fact that the Outstanding Orders were not authorized by EFFICIENT, BANK refused
14 and continues to refuse to refund the amount of One Million One Hundred Twenty Six Thousand Two
15 Hundred Twenty Four and No Cents (\$1,126,224.00) that was transferred from EFFICIENT's accounts
16 as a result of the Outstanding Orders.

17 66. Despite the fact that ACCOUNTANT was responsible for EFFICIENT's escrow accounting in
18 December 2012 when the series of fraudulent wires were initiated, ACCOUNTANT denies any
19 responsibility for its failure to complete the escrow accounting and to detect the fraudulent wires and
20 refuses to pay the amount of One Million One Hundred Twenty Six Thousand Two Hundred Twenty
21 Four and No Cents (\$1,126,224.00) as well as any consequential damages resulting from the closure of
22 EFFICIENT.

23
24 **FIRST CAUSE OF ACTION**
25 **(AGAINST DEFENDANT FIRST FOUNDATION BANK)**
26 **Breach of Statutory Duty**
27 **Commercial Reasonableness of Security Procedures**
28 **California Commercial Code Section 11202(b)(i)-(ii) and 11202(c)**

67. Plaintiff incorporates its general allegations, and all of them, as set forth above in paragraphs 1
through 66 inclusive.

1 68. BANK offered EFFICIENT, and EFFICIENT agreed to use, a Token "Security Procedure" as the
2 term "Security Procedure" is defined in California Commercial Code section 11201 and as required
3 under California Commercial Code section 11202(c)(i).

4 69. On January 24, 2013 BANK, failed to properly implement, and failed to process a payment order
5 by proper use of the Token "Security Procedure" agreed upon between FIRST FOUNDATION BANK
6 and EFFICIENT and as required under California Commercial Code section 11202 causing
7 EFFICIENT's accounts to wrongfully lose Five Hundred Sixty Three Thousand One Hundred and
8 Twelve Dollars and No Cents (\$563,112.00).

9 70. On January 30, 2013 BANK failed to properly implement, and failed to process a payment order
10 by proper use of the Token "Security Procedure" agreed upon between BANK and EFFICIENT and as
11 required under California Commercial Code section 11202 causing EFFICIENT's accounts to wrongfully
12 lose Five Hundred Sixty Three Thousand One Hundred and Twelve Dollars and No Cents (\$563,112.00).

13 71. The alleged "Security Procedure" followed by BANK in connection with the Outstanding
14 Orders, was not, and continues not to be, commercially reasonable.

15 72. In the alternative, and if there existed a commercially reasonable "Security Procedure," then
16 BANK failed to follow such procedure as agreed upon by Cash Management Agreement executed by and
17 between BANK and EFFICIENT and attached hereto as Exhibit A. As such, the Outstanding Orders
18 were not effective as orders of EFFICIENT under California Commercial Code section 11202.

19 73. Plaintiff is informed and believes, and on such basis alleges, that the Outstanding Orders were,
20 and continue to be, unenforceable because they were not caused, directly or indirectly, by an agent of
21 EFFICIENT, or by one who obtained authorized access to the transmitting facilities of EFFICIENT, or
22 by one who obtained information facilitating the breach of any "Security Procedure" from the control of
23 the EFFICIENT, pursuant to California Commercial Code section 11203.

24 74. Because the Outstanding Orders are ineffective and/or are unenforceable, the amount of the
25 Outstanding Orders must be refunded by BANK to Plaintiff, as EFFICIENT's receiver, pursuant to
26 California Commercial Code section 11204, together with interest thereon, pursuant to California
27 Commercial Code sections 11204 and 11506.

28 75. Wherefore, Plaintiff prays judgment against BANK, jointly and severally, as set forth below.

SECOND CAUSE OF ACTION
(AGAINST DEFENDANT FIRST FOUNDATION BANK)
Breach of Statutory Duty
Good Faith Acceptance of Payment Orders
California Commercial Code Section 11202(b)(ii)

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5 76. Plaintiff incorporates its general allegations, and all of them, as set forth above in paragraphs 1
6 through 75, inclusive.

7 77. BANK was, and is, required to accept and process payment orders in “Good Faith” as set forth in
8 California Commercial Code section 11202(b)(ii).

9 78. BANK was, and is, required to employ “reasonable commercial standards of fair dealing” in its
10 acceptance and processing of payment orders as set forth in California Commercial Code section 11202.

11 79. BANK did not accept and process the Outstanding Orders in “Good Faith” when BANK allowed
12 the Outstanding Orders, which were designated for international destinations, to be processed without
13 conducting international security protocol investigations mandated by federal law and by abandoning
14 policies and procedures.

15 80. BANK did not accept and process the Outstanding Orders in “Good Faith” when BANK allowed
16 the Outstanding Orders, which were designated for international destinations, to be processed because
17 EFFICIENT was never provided the information and/or authorization to execute international wire
18 transfers from BANK.

19 81. BANK did not accept and process the Outstanding Orders in “Good Faith” when BANK allowed
20 the Outstanding Orders to be processed without proper token security procedure verification.

21 82. BANK did not accept and process the Outstanding Orders in “Good Faith” when BANK allowed
22 the Outstanding Orders to be processed by an individual who was not listed as an “Authorized
23 Representative” for Plaintiff as required under the written “Private Access Online Banking Agreement”
24 at section 7: “Authorized Representative.”

25 83. BANK did not accept and process the Outstanding Orders in “Good Faith” when allowed the
26 Outstanding Orders to be processed despite the warning issued by the FBI in the FBI Wire Fraud Alert
27 attached hereto as Exhibit B.
28

1 84. BANK did not accept and process the Outstanding Orders in “Good Faith” when BANK allowed
2 the Outstanding Orders to be processed after BANK employee Jimmy Ton implemented a security over-
3 ride of EFFICIENT’s online banking accounts in or around November 2, 2012 to bypass the requirement
4 of a token fob password as a security procedure to execute wire transfers in direct conflict with the
5 security procedure agreed upon by EFFICIENT and BANK.

6 85. BANK did not accept and process the Outstanding Orders in “Good Faith” as required under
7 California Commercial Code section 11202, and therefore BANK is required to refund the full amount of
8 any unauthorized payment order, plus interest pursuant to California Commercial Code sections 11204
9 and 11506.

10 86. BANK did not employ “reasonable commercial standards of fair dealing” in its acceptance and
11 processing of the Outstanding Orders as required under California Commercial Code section 11202, and
12 therefore BANK is required to refund the full amount of any unauthorized payment orders, plus interest
13 pursuant to California Commercial Code sections 11204 and 11506.

14 87. Because the Outstanding Orders are ineffective and/or unenforceable, the amount of the
15 Outstanding Orders must be refunded by BANK to Plaintiff, as receiver for EFFICIENT, pursuant to
16 California Commercial Code section 11204, together with interest thereon, pursuant to California
17 Commercial Code sections 11204 and 11506.

18 88. Wherefore, Plaintiff prays judgment against BANK, jointly and severally, as set forth below.
19

20 **THIRD CAUSE OF ACTION**
21 **(AGAINST DEFENDANT FIRST FOUNDATION BANK)**
22 **FRAUD, MALICE, OPPRESSION**

23 89. Plaintiff incorporates its general allegations, and all of them, as set forth above in paragraphs 1
24 through 88, inclusive.

25 90. Plaintiff is informed and believes and on that basis alleges that at all times relevant and before the
26 December 17, 2012 Outstanding Order, BANK knew its online banking service was problematic, unsafe
27 and unsecure for its customers but nonetheless continued to assure its customers that its online banking
28 was safe, reliable and secure.

1 91. Plaintiff is informed and believes and on that basis alleges that as early as September 2012
2 BANK had been repeatedly informed by its customers that BANK's online banking website was
3 problematic, unreliable and unsecure.

4 92. Plaintiff is informed and believes and on that basis alleges that as early as December 4, 2012
5 BANK was informed by its customers including, but not limited to, Anthony Capobianco and the
6 Capobianco Law Offices, that its online banking website and its tokenization security system had been
7 compromised and breached by third party hackers.

8 93. Plaintiff is informed and believes and on that basis alleges that as of December 4, 2012, BANK
9 knew about the vulnerability of its online banking token security system and that it failed and/or
10 deliberately chose not to inform and warn its customers of the same including, but not limited to,
11 EFFICIENT.

12 94. Plaintiff is informed and believes and on that basis alleges that after being directly informed by its
13 customers of the vulnerability of its online banking tokenization security system in early December,
14 2012, BANK failed to rectify its problematic security procedures, implement new procedures or take any
15 additional security measures to prevent future breaches such as those that were executed against
16 EFFICIENT in December 2012 and January 2013.

17 95. Plaintiff is informed and believes and on that basis alleges that at all times following
18 EFFICIENT's reporting of the Outstanding Orders to BANK, said BANK initiated a fraudulent,
19 malicious, oppressive and defamatory campaign against EFFICIENT to blame EFFICIENT for the
20 Outstanding Orders when said BANK knew its online banking service was problematic, unsafe and
21 unsecure for its customers and that said BANK was liable for the same.

22 96. Plaintiff is informed and believes and on that basis alleges that BANK has initiated other
23 fraudulent, malicious, oppressive and defamatory campaigns against other victims of said BANK's
24 problematic, unsafe and unsecure online banking as part of its business practice, including a campaign
25 against the Capobianco Law Offices and Anthony Capobianco.

26 97. The Capobianco Law Offices and Anthony Capobianco filed an action against FIRST
27 FOUNDATION BANK on July 12, 2013 in Riverside County (Case No. INC 1304494) for recovery of a
28 fraudulent wire transfer which allegedly occurred on December 3, 2012. In said action, BANK is alleged

1 to have accused the Capobianco Law Offices and Anthony Capobianco of inventing a cybertheft story to
2 conceal immoral sexual conduct (a mail order girlfriend in the Ukraine). Plaintiff is informed and
3 believes and on that basis alleges that the Capobianco Law Offices and Anthony Capobianco currently
4 have pending claims against BANK for, inter alia, the funds lost in the alleged cybertheft and for
5 defamation due to BANK's defamatory campaign.

6 98. The fraudulent, malicious, oppressive and defamatory campaign against EFFICIENT by BANK
7 consisted of a biased, unprofessional, incomplete and false investigation of the incident.

8 99. The fraudulent, malicious, oppressive and defamatory campaign against EFFICIENT by BANK
9 also consisted the preparation of a fraudulent Incident Report which contained numerous
10 misrepresentations and concealments as follows:

- 11 a. The Incident Report prepared by BANK fraudulently omitted the history of verbal and written
12 complaints between September 2012 and December 2012 from EFFICIENT and its
13 employees and other customers, including the Capobianco Law Offices and Anthony
14 Capobianco, about problems with FIRST FOUNDATION BANK's online banking and online
15 wire transfer services with the intent to conceal Defendant BANK's liability and wrongdoing.
- 16 b. The Incident Report prepared by BANK fraudulently stated EFFICIENT had authorization to
17 execute and did execute international wires, when BANK knew that EFFICIENT did not have
18 such authorization and that EFFICIENT had never executed an international wire. These
19 misrepresentations were made with the intent to conceal BANK's liability and wrongdoing.
- 20 c. The Incident Report prepared by BANK fraudulently omitted essential information and
21 contained misrepresentations regarding BANK employee Jimmy Ton's deactivation of
22 EFFICIENT's online banking tokenization security procedure to bypass the requirement of
23 the input of a token fob password as a security procedure to execute wire transfers in direct
24 conflict with the security procedure agreed upon by EFFICIENT and BANK. These omissions
25 were made with the intent to conceal BANK's liability and wrongdoing.
- 26 d. The Incident Report prepared by BANK fraudulently omitted essential information and
27 contained misrepresentations regarding EFFICIENT's employee Julie Gardner's wire transfer
28 history with BANK when BANK knew that (i) Julie Gardner was not a properly authorized

1 individual who was permitted to have access to online banking and wire transfer service under
2 the written contract executed between EFFICIENT and BANK; and (ii) due to problems
3 with BANK'S online banking and token security system, Julie Gardner was unable to use her
4 computer to execute any wire transfers in December 2012 and January 2013 when the
5 Outstanding Orders incidents occurred. These omissions were made with the intent to
6 conceal BANK's liability and wrongdoing.

7 e. The Incident Report prepared by BANK fraudulently omitted essential information and
8 contained misrepresentations regarding EFFICIENT's token security procedure history with
9 BANK with the intent to conceal Defendant BANK's liability and wrongdoing.

10 f. The Incident Report prepared by BANK fraudulently, maliciously and oppressively alleged
11 that the Outstanding Orders were the result of internal fraud on the part of EFFICIENT and its
12 employee Julie Gardner when it knew BANK was liable for the Outstanding Orders.

13 100. Plaintiff is informed and believes and based thereon alleges that at all times following
14 EFFICIENT's reporting of the Outstanding Orders to BANK, said BANK knew that "time was of the
15 essence" in its investigation and in its reimbursement of the missing funds so that EFFICIENT could
16 maintain its license and business. Knowing that "time was of the essence," the fraudulent, malicious,
17 oppressive and defamatory campaign against EFFICIENT by BANK further consisted of a dilatory
18 investigation of the Outstanding Orders as set forth herein ¶¶50-60 and Exhibits C-J designed to assure
19 that EFFICIENT would lose its license and its business and would be without the financial means to
20 challenge BANK.

21 101. BANK fraudulently, maliciously and oppressively continued its campaign against EFFICIENT
22 when it disseminated its fraudulent Incident Report and verbally repeated the false information,
23 misrepresentations and concealments set forth herein to third parties and to other professionals and
24 business colleagues in the community in a deliberate attempt to cause injury to EFFICIENT and to render
25 EFFICIENT incapable of recovery of the missing funds.

26 102. Plaintiff is informed and believes and based thereon alleges that BANK has a history of denying
27 liability for online banking security breaches and of fraudulently, maliciously and oppressively blaming
28 its customers for security breaches by suggesting its customers have engaged in wrongful, immoral or

1 criminal behavior. Plaintiff is informed and believes and thereon alleges that BANK has adopted this
2 practice as a means to escape liability and to rescue its declining reputation.

3 103. BANK acted with intent, fraud, malice, oppression and with a conscious disregard for the rights
4 of EFFICIENT when it executed its campaign against EFFICIENT as set forth herein.

5 104. As a result of the fraud, malice, oppression as described herein, EFFICIENT suffered financial
6 loss by the closure of its business and the loss of its license in an amount to be proven at trial.

7 105. As a result of the fraud, malice, oppression as described herein, EFFICIENT suffered financial
8 loss including reasonably certain lost profits in an amount to be proven at trial.

9 **FOURTH CAUSE OF ACTION**
10 **(AGAINST DEFENDANT FIRST FOUNDATION BANK)**
11 **CORPORATE DEFAMATION**

12 106. Plaintiff incorporates its general allegations, and all of them, as set forth above in paragraphs 1
13 through 105, inclusive.

14 107. BANK published, disseminated and verbally repeated the false information, misrepresentations,
15 concealments and disparaging statements as set forth herein to third parties including other professionals
16 and business colleagues of EFFICIENT.

17 108. Said false information, misrepresentations, concealments and disparaging statements include, but
18 are not limited to the following: (i) BANK's management of accounts and online banking was
19 professional, safe and reliable and played no role in the loss of funds; and (ii) the Outstanding Orders
20 were the result of internal fraud by EFFICIENT.

21 109. BANK's defamatory statements were intentional, fraudulent, malicious and oppressive. BANK
22 published, disseminated and verbally repeated the false information, misrepresentations, concealments
23 and disparaging statements about EFFICIENT as set forth herein knowing them to be untrue; or
24 alternatively, BANK failed to use reasonable care to determine the truth or falsity of the published
25 information in reckless disregard of the truth and of EFFICIENT's rights.

26 110. BANK's statements were defamatory because they included overtly and implied covertly that
27 EFFICIENT committed a criminal act or an act of moral turpitude or dishonesty leading other third
28

1 parties to believe that EFFICIENT and its employees were untrustworthy, unethical, unprofessional and
2 criminals.

3 111. BANK's defamatory statements were understood by third parties in their defamatory meaning as
4 alleged and substantially caused EFFICIENT to suffer contempt and ridicule.

5 112. BANK's defamatory statements were directly responsible for or substantially contributed to the
6 closure of EFFICIENT and a loss of its licensure.

7 113. BANK's defamatory statements substantially caused injury to EFFICIENT's reputation and
8 business relationships directly resulting in a loss of business and profits in an amount to be proven at
9 trial.

10 **FIFTH CAUSE OF ACTION**
11 **(AGAINST DEFENDANT BENTSON, VUONA AND WESTERSTEN, LLP)**
12 **NEGLIGENCE**

13 114. Plaintiff incorporates its general allegations, and all of them, as set forth above in paragraphs 1
14 through 113, inclusive.

15 115. Pursuant to agreement, at all times relevant, ACCOUNTANT had a duty to perform
16 EFFICIENT's general accounting, payroll and escrow accounting in accordance with professional CPA
17 and escrow standards for a monthly flat fee.

18 116. Pursuant to agreement at all times relevant, EFFICIENT paid a monthly fee to ACCOUNTANT
19 to perform EFFICIENT's general accounting, payroll and escrow accounting in accordance with
20 professional CPA and escrow standards professional CPA and escrow standards for a monthly flat fee.

21 117. At all times during the existence of the agreement between EFFICIENT and ACCOUNTANT,
22 EFFICIENT relied completely on ACCOUNTANT to perform the agreement as well as on
23 ACCOUNTANT's skill and the ability of ACCOUNTANT.

24 118. ACCOUNTANT negligently, carelessly and recklessly rendered services as ACCOUNTANT in
25 that it failed to perform the professional accounting services to which it contractually agreed including
26 the escrow accounting for September 2012, October 2012, November 2012, December 2012 and January
27 2013, and in doing so, failed to render the skill required of and commonly exercised by certified public
28 accountants.

1 119. As a direct result of ACCOUNTANT's negligence, carelessness and recklessness, EFFICIENT
2 was unable to timely complete its escrow accounting for September 2012, October 2012, November
3 2012, December 2012 and January 2013.

4 120. As a direct result of ACCOUNTANT's negligence, carelessness and recklessness, EFFICIENT
5 did not discover the December 17, 2012, January 24, 2013 and January 30, 2013 fraudulent wire transfers
6 from its online banking account until February 2013.

7 121. But for ACCOUNTANT's negligence, carelessness and recklessness, EFFICIENT would have
8 been advised and aware of the December 17, 2012 fraudulent wire transfer from its online banking
9 account promptly and would have been able to take actions to prevent the occurrence of the January 24,
10 2013 and January 30, 2013 fraudulent wire transfers.

11 122. As a direct result of ACCOUNTANT's negligence, carelessness and recklessness, EFFICIENT
12 lost \$563,112.00 in a fraudulent wire transfer on January 24, 2013 and \$563,112.00 in a fraudulent wire
13 transfer on January 30, 2013, for a total of One Million One Hundred Twenty Six thousand Two Hundred
14 Twenty Four and No Cents (\$1,126,224.00).

15 123. As a direct result of ACCOUNTANT's negligence, carelessness and recklessness, the
16 DEPARTMENT OF CORPORATIONS closed the business of EFFICIENT and sought to revoke the
17 licenses of its operators for malfeasance.

18 124. As a direct result of ACCOUNTANT's negligence, carelessness and recklessness, EFFICIENT
19 suffered a complete loss of its business and all profits in an amount to be proven at trial.
20

21 **SIXTH CAUSE OF ACTION**
22 **(AGAINST DEFENDANT BENTSON, VUONA AND WESTERSTEN, LLP)**
23 **BREACH OF CONTRACT**

24 125. Plaintiff incorporates its general allegations, and all of them, as set forth above in paragraphs 1
25 through 124, inclusive.

26 126. At all times relevant, ACCOUNTANT and EFFICIENT had an oral contract to do
27 EFFICIENT's general accounting, payroll and escrow accounting in accordance with professional CPA
28 and escrow standards for a flat monthly fee.

1 127. At all times relevant, EFFICIENT performed its obligations under the contract it had with
2 ACCOUNTANT by paying the agreed to flat monthly fee for ACCOUNTANT's professional services
3 and advice.

4 128. ACCOUNTANT breached its contract with EFFICIENT when it failed to perform the
5 professional accounting services to which it had contractually agreed, including the escrow accounting
6 for September 2012, October 2012, November 2012, December 2012 and January 2013.

7 129. As a direct result of ACCOUNTANT's breach of contract, EFFICIENT was unable to complete
8 its escrow accounting for September 2012, October 2012, November 2012, December 2012 and January
9 2013 in a timely manner.

10 130. As a direct result of ACCOUNTANT's breach of contract, EFFICIENT was not advised and did
11 not discover the December 17, 2012, January 24, 2013 and January 30, 2013 fraudulent wire transfers
12 from its online banking account until February 2013.

13 131. But for ACCOUNTANT's breach of contract, EFFICIENT would have been advised and aware
14 of the December 17, 2012 fraudulent wire transfer from its online banking account promptly and would
15 have been able to prevent the occurrence of the January 24, 2013 and January 30, 2013 fraudulent wire
16 transfers from its online banking account.

17 132. As a direct result of ACCOUNTANT's breach of contract, EFFICIENT lost \$563,112.00 in a
18 fraudulent wire transfer on January 24, 2013 and \$563,112.00 in a fraudulent wire transfer on January 30,
19 2013, for a total of One Million One Hundred Twenty Six thousand Two Hundred Twenty Four and No
20 Cents (\$1,126,224.00).

21 133. As a direct result of ACCOUNTANT's breach of contract, EFFICIENT suffered a complete loss
22 of its business and all profits, as well as other consequential damages, in an amount to be proven at trial.

23
24 **SEVENTH CAUSE OF ACTION**
25 **(AGAINST DEFENDANT BENTSON, VUONA AND WESTERSTEN, LLP)**
26 **BREACH OF FIDUCIARY DUTY**

27 134. Plaintiff incorporates its general allegations, and all of them, as set forth above in paragraphs 1
28 through 133, inclusive.

1 135. At all times relevant, ACCOUNTANT represented itself to EFFICIENT as a CPA firm which
2 specialized in escrow accounting and a CPA firm that had expertise in complying with specific
3 accounting standards applicable to the California escrow industry in order to gain EFFICIENT's trust and
4 confidence.

5 136. At all times relevant, ACCOUNTANT represented to EFFICIENT that it could assist and
6 service EFFICIENT's business needs in complying with statutory accounting regulations applicable to
7 the California escrow industry in order to gain EFFICIENT's trust and confidence

8 137. At all times relevant, ACCOUNTANT represented to EFFICIENT that it could assist and service
9 the business needs of EFFICIENT in its interactions with the DEPARTMENT OF CORPORATIONS,
10 the government agency in charge of regulating the California independent escrow industry, in order to
11 gain EFFICIENT's trust and confidence.

12 138. At all times relevant, ACCOUNTANT represented to EFFICIENT that it could offer EFFICIENT
13 personal attention, specialized oversight and confidential guidance in the operation of its escrow business
14 accounting.

15 139. EFFICIENT relied on the representations of ACCOUNTANT and placed its trust in the
16 representations and advice rendered by ACCOUNTANT.

17 140. At all times a fiduciary relationship existed between EFFICIENT and ACCOUNTANT whereby
18 ACCOUNTANT agreed to maintain the trust and confidence and to act honestly and with EFFICIENT's
19 best interest in mind.

20 141. EFFICIENT confided its private financial information including the outcome of a 2012 audit of
21 EFFICIENT by the DEPARTMENT OF CORPORATIONS to ACCOUNTANT in which EFFICIENT
22 had been advised of the necessity to maintain its escrow accounting system. Based upon these
23 confidential conversations with EFFICIENT, ACCOUNTANT knew EFFICIENT required special
24 advice, attention and guidance in maintaining its records and timely completing its escrow accounting
25 and reconciliations.

26 142. ACCOUNTANT failed to perform the professional accounting services it promised to
27 EFFICIENT including the escrow accounting for September 2012, October 2012, November 2012,
28 December 2012 and January 2013, and in doing so, breached the fiduciary duty it owed to EFFICIENT.

1 143. As a direct result of ACCOUNTANT's breach of its fiduciary duty, EFFICIENT was unable to
2 complete its escrow accounting for September 2012, October 2012, November 2012, December 2012 and
3 January 2013 in a timely manner.

4 144. As a direct result of ACCOUNTANT's breach of its fiduciary duty, EFFICIENT did not discover
5 the December 17, 2012, January 24, 2013 and January 30, 2013 fraudulent wire transfers from its online
6 banking account until February 2013.

7 145. But for ACCOUNTANT's breach of its fiduciary duty, EFFICIENT would have discovered the
8 December 17, 2012 fraudulent wire transfer from its online banking account promptly and would have
9 been able to prevent to occurrence of the January 24, 2013 and January 30, 2013 fraudulent wire transfers
10 from its online banking account.

11 146. As a proximate result of ACCOUNTANT's breach of its fiduciary duty, the DEPARTMENT OF
12 CORPORATIONS closed the business of EFFICIENT and sought to revoke the licenses of its operators
13 for malfeasance.

14 147. As a proximate result of ACCOUNTANT's breach of its fiduciary duty, EFFICIENT suffered a
15 complete loss of its business and all profits, as well as other consequential damages in an amount to be
16 proven at trial.

17 PRAYER FOR DAMAGES

18 Wherefore, Plaintiff prays judgment against **DEFENDANT FIRST FOUNDATION BANK** as
19 set forth below:

20 A. One Million One Hundred Twenty Six thousand Two Hundred Twenty Four and No Cents
21 (\$1,126,224.00) for its statutory breach of the California Commercial Code;

22 B. Interest on One Million One Hundred Twenty Six thousand Two Hundred Twenty Four and No
23 Cents (\$1,126,224.00) at the rate pursuant to the formula in Commercial Code section 11506, from
24 and after December 24, 2012, through the date of entry of judgment in an amount according to proof;

25 C. Consequential damages in an amount according to proof for its fraudulent, oppressive, malicious,
26 defamatory conduct;

27 D. Exemplary and/or punitive damages against DEFENDANT FIRST FOUNDATION BANK, for
28 its fraudulent, oppressive, malicious, defamatory conduct; and

1 E. For such other and further relief as this Court may deem equitable, just and proper.

2 Wherefore, Plaintiff prays judgment against Defendant **BENTSON, VUONA AND**
3 **WESTERSTEN, LLP** as set forth below:

4 A. One Million One Hundred Twenty Six thousand Two Hundred Twenty Four and No Cents
5 (\$1,126,224.00) for its negligence, breach of contract and breach of fiduciary duty;

6 B. All fees paid by EFFICIENT to Defendant BENTSON, VUONA AND WESTERSTEN, LLP;

7 C. Prejudgment and post judgment interest in an amount according to proof;

8 D. Consequential damages in an amount according to proof;

9 E. Punitive Damages against BENTSON, VUONA AND WESTERSTEN, LLP for its outrageous
10 conduct and misrepresentations to EFFICIENT as set forth herein; and

11 F. For such other and further relief as this Court may deem equitable, just and proper.

12 Dated: February 25, 2013

DINCEL LAW GROUP

13
14
15 By: 
16 Kim O. Dincel
17 Julie Bonnel-Rogers
18 Attorneys for Plaintiff
19 PETER A. DAVIDSON, Receiver for
20 EFFICIENT SERVICES ESCROW GROUP,
21 a California Corporation
22
23
24
25
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27
28

PROOF OF SERVICE

Peter A. Davidson v. First Foundation Bank Case No. 30-2013-00691661-CU-MC-CJC

I am employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 25 Metro Drive, Suite 600, San Jose, CA 95110.

On February 25, 2014, I served the foregoing document(s) described as follows:

PLAINTIFF, PETER A. DAVIDSON, RECEIVER FOR EFFICIENT SERVICES ESCROW GROUP'S FIRST AMENDED COMPLAINT FOR DAMAGES FOR:

1. BREACH OF STATUTORY DUTY: CALIFORNIA COMMERCIAL CODE SECTION 11202 –COMMERCIAL REASONABLENESS OF SECURITY PROCEDURES;

2. BREACH OF STATUTORY DUTY: CALIFORNIA COMMERCIAL CODE SECTION 11202 –GOOD FAITH ACCEPTANCE OF PAYMENT ORDERS; AND

3. FRAUD, MALICE, OPPRESSION

4. CORPORATE DEFAMATION

5. NEGLIGENCE

6. BREACH OF CONTRACT

7. BREACH OF FIDUCIARY DUTY

on all interested parties in this action by placing a true copy thereof addressed as follows:

Marc J. Schneider Shane P. Criqui Annie H. Huang STRADLING YOCCA CARLSON & RAUTH 660 Newport Center, Suite 1600 Newport Beach, CA 92660-6422 Tel: (949) 725-4000 Fax: (949) 725-4100	Attorneys for FIRST FOUNDATION BANK
Patrick A. Fraioli, Jr. ERVIN COHEN JESSUP, LLP 9401 Wilshire Blvd., 9 th Floor Beverly Hills, CA 90212-2974 Tel: (310) 281-6346 Fax: (310) 859-2325	Attorneys for PETER A. DAVIDSON Receiver for EFFICIENT SERVICE ESCROW GROUP, INC.

[X] BY MAIL: I deposited such envelope in the mail at San Jose, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, all mail is deposited with the U.S. Postal Service on the same day with postage thereon, fully prepaid at Costa Mesa, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postage meter date is more than one day after date of deposit for

mailing in the affidavit.

1
2 **BY PERSONAL SERVICE:** I caused a true and correct copy thereof enclosed in a sealed envelope to be delivered by hand to the above-named addressee(s).

3 **BY ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused said document(s) to be sent to the person(s) at the e-mail address(es) listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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6 **BY OVERNIGHT COURIER:** I placed the UPS package for overnight delivery in a box or location regularly maintained by UPS at my office or I delivered the package to an authorized courier or driver authorized by UPS to receive documents. The package was placed in a sealed envelope or package designated by UPS with deliver fees paid or provided for, addressed as follows:

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9 **BY FACSIMILE TRANSMISSION:** I caused the above-referenced document to be transmitted to the person(s) set forth in the attached service list, at the facsimile number(s) set forth thereto. The facsimile machine I used complied with rule 2003(3) and no error was reported by the machine. Pursuant to rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

10
11
12 **(State)** I declare under penalty of perjury, pursuant to the laws of the State of California, that the above is true and correct.

13 Executed on November 25, 2010, at San Jose California.

14 Kimberly Nimori-Ide

15 Type or Print Name

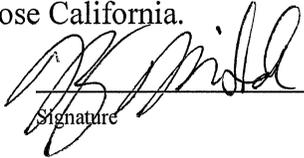
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Signature

EXHIBIT "A"



CASH MANAGEMENT SERVICES

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Private Access Online Business Banking Agreement

This Agreement explains the terms and conditions for accessing accounts and conducting online transactions at First Foundation Bank ("Bank", "we", "us" and "our") via our On-Line Banking ("On-line Banking"). As used in this Agreement, the terms "you", "client" and "your" refer to each person signing an On-Line Banking Application. The terms and conditions of this Agreement are in addition to the Account agreements, disclosures and other documents in effect from time to time governing your Account.

You may not initiate transactions until accepting this Agreement. By clicking "I Agree" when you register for Private Access Online Banking service or by using the service, you agree to the terms and conditions of this Agreement.

1. Online Banking Accessibility

You can usually access On-Line Banking seven (7) days a week, twenty-four (24) hours a day. However, at certain times, some or all of On-Line Banking may not be available due to system maintenance or reasons beyond Bank's control. Bank does not warrant that On-Line Banking will be available at all times. When unavailable, call our Bank to conduct your many of your transactions. An On-line transaction initiated prior the prevailing timeframes posted by Bank on a banking day is posted to your account the next day. All transfers completed that cutoff time or on a non-banking day, will be posted the following banking day.

2. Security & Protecting Your Account

We are strongly committed to protecting the security and confidentiality of our client accounts information. We use several techniques to help secure our On-Line Banking service, including the following:

- You can only access On-Line Banking with browsers that have a high security standard.
- Your account numbers are never displayed in full.
- You must have a valid On-Line Banking ID and personal identification number ("PIN") to logon.
- If no action is taken for 10 minutes, you will be automatically logged off the On-Line Banking service.
- Establishing procedural, physical and electronic safeguards to prevent the compromise or unauthorized disclosure of confidential information, that meets the objectives of the guidelines issued under the Gramm-Leach-Bliley Act.
- Restricting access to confidential information to those employees and persons with a need to know confidential information in order to perform their obligations under this Agreement, and by instructing such employees and persons that they must adhere to these "Security and Protecting your Account" provisions.
- Complying with all current and future regulations with regard to the non-public personal information.
- Requiring third party vendors retained or hired to assist in performing duties under this Agreement that they similarly protect and restrict the use of confidential information.

3. Private Access On-line PIN and Token

Your PIN and token will give you access to Bank accounts via On-Line Banking. Bank is entitled to act on any instructions it

receives using your PIN and token. For security purposes, it is recommended that you memorize your PIN and do not write it down and keep your token in a secure manner. We also recommend that you change your PIN regularly to try and avoid misappropriation by a third party. Your PIN can be changed at our On-Line Banking site. You are responsible for keeping your PIN, token and account data confidential. You are responsible for all transactions performed using your PIN, even if you did not intend or authorize them. In addition, fraudulent transactions initiated using your PIN will be charged against your account(s).

4. Online Banking Services

On-Line Banking allows you to manage eligible accounts from your home or office using a personal computer. On-Line Banking can be used to conduct any of the following financial services:

- Obtain balances and transaction histories on all eligible accounts enrolled in On-Line Banking;
- Transfer money between eligible accounts;
- Transfer money to pay Bank for overdraft protection, make loan payments and pay bills to any merchant, financial organization or an individual with a U.S. address; and
- "Download" account information into Quicken and QuickBooks.
- Online Stop Payments
- Elect to participate in the following optional Cash Management modules:
 - o Online Bill Pay
 - o EZ Deposit or EZ Deposit Lite
 - o WireXchange
 - o ACH origination
 - o Positive Pay

The Bank may, from time to time, introduce new on-line services. By using those services when they become available, you agree to be bound by the terms contained in the agreement(s) relating to such services, or in this Agreement, and its subsequent amendments, as the case may be.

5. Stop Payments

The stop payment feature within the Service is only for stopping payments on checks that you have written or from your account. This feature is accessible in the "Stop Payment" menu of the Internet Banking Service and provides a means to securely forward your stop payment requests to us for processing. This Financial Institution and the undersigned agree to abide by the rules and regulations as outlined in the Uniform Commercial Code governing stop-payment orders. Online Stop-Payment Orders are effective for 180 days after date received and will automatically expire after that period unless renewed in writing. Stop payment requests received through the Service will generally be processed within one (1) to two (2) Business Days. The stop payment feature within the Service should NOT be used to cancel transfers and bill payments. There is typically a stop payment fee associated with this feature. Please refer to our Business Service Fee Schedule for additional information.



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6. Online Bill Payment

If you enroll in Private Access Bill Pay Services you agree to the Terms and Conditions governing those services. The Terms and Conditions are listed within the Bill Pay site as links to the full document.

7. Authorized Representatives

The Client may designate, at their sole option, additional persons to perform designated banking transactions for the activities and levels of authority provided within the Online Banking control files. Clients are responsible for maintaining accurate and up-to-date authorization limits for each user in their organization to whom they have given cash management service privileges. The names and limits of each user shall comprise the only list of authorized users for the Online Banking or Cash Management modules you have enrolled in.

In an emergency situation, deletion of Software Administrators and Authorized Representatives may be processed by Bank if the request is made by telephone and is immediately confirmed by FAX or email.

8. Electronic Mail (E-mail)

Sending E-mail is a very good way to communicate with the Bank regarding your accounts or the On-Line Banking. However, your e-mail is actually sent via your own software and, as a result, is not secure. You should not include confidential information, such as account numbers and balances in any e-mail to Bank. You cannot use e-mail to initiate On-Line Banking transactions. All such transactions must be initiated using the appropriate functions within the On-Line Banking site. Bank will not be liable for any errors, omissions, claims, or problems of any kind involving your e-mail.

9. Release.

You release us and our Affiliates and licensors and contractors and the employees and contractors of each of these, from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with any dispute that may arise between you and one or more other users of the Site or the Service. In addition, you waive California Civil Code §1542, which states that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if not known by him must have materially affected his settlement with the debtor.

10. No Waiver.

We shall not be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by one of our authorized representatives. No delay or omission on our part in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

11. Third Party Beneficiary.

You agree that our service providers may rely upon your agreements and representations in this Agreement, and such

service providers are third party beneficiaries to this Agreement, with the power to enforce its provisions against you.

12. Disclosure of Information

Information submitted to Bank or its suppliers is the property of those parties, and they are free to use and disclose that information, or any ideas, concepts, know-how or techniques contained in that information to any third party for any purpose whatsoever, except as specifically agreed by Bank or prohibited by law.

13. Links to other Sites

Information that Bank publishes on the Internet may contain links to other sites and third parties may establish links to Bank's site. Bank makes no representations about any other web site that you may access to, from or through any of the Bank's sites. Unless expressly stated in writing, Bank does not endorse the products or services offered by any company or person linked to this site nor is Bank responsible for any software or the content of any information published on the site of any third party. You should take precautions when downloading files from sites to protect your computer software and data from viruses and other destructive programs. You are solely responsible for any telephone or internet service provider charges incurred when using the On-Line Banking.

14. Remedies.

If we have reason to believe that you have engaged in any of the prohibited or unauthorized activities described in this Agreement or have otherwise breached your obligations under this Agreement, we may: terminate, suspend or limit your access to or use of the Site or the Service; notify law enforcement, regulatory authorities, impacted third parties, and others as we deem appropriate; refuse to provide our services to you in the future; and/or take legal action against you. In addition, we, in our sole discretion, reserve the right to terminate this Agreement, access to the Site and/or use of the Service for any reason or no reason and at any time. The remedies contained in this section are cumulative and are in addition to the other rights and remedies available to us under this Agreement, by law or otherwise.

15. Additional Remedies

Due to the likelihood of irreparable injury, Bank shall be entitled to an injunction prohibiting any breach of this Agreement by you.

16. Disputes.

In the event of a dispute regarding the Service, you and we agree to resolve the dispute by looking to this Agreement.

17. Arbitration.

For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000.00 USD, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. If a party elects arbitration, that party will initiate such arbitration through Judicial Arbitration and Mediation Services ("JAMS"), the American Arbitration Association ("AAA"), or an established



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alternative dispute resolution (ADR) administrator mutually agreed upon by the parties. The parties agree that the following rules shall apply: (a) the arbitration may be conducted telephonically, online and/or be solely based on written submissions, at the election of the party initiating the arbitration; (b) the arbitration shall not involve any personal appearance by the parties, their representatives or witnesses unless otherwise mutually agreed by the parties; (c) discovery shall not be permitted; (d) the matter shall be submitted for decision within ninety (90) days of initiation of arbitration, unless otherwise agreed by the parties, and the arbitrator must render a decision within thirty (30) days of submission; and (e) any award in such arbitration shall be final and binding upon the parties may be submitted to any court of competent jurisdiction for confirmation. The parties acknowledge that remedies available under federal, state and local laws remain available through arbitration. **NO CLASS ACTION, OR OTHER REPRESENTATIVE ACTION, OR PRIVATE ATTORNEY GENERAL ACTION, OR JOINDER OR CONSOLIDATION OF ANY CLAIM WITH A CLAIM OF ANOTHER PERSON SHALL BE ALLOWABLE IN ARBITRATION.**

18. Assignment.

You may not transfer or assign any rights or obligations you have under this Agreement without our prior written consent, which we may withhold in our sole discretion. We reserve the right to transfer or assign this Agreement or any right or obligation under this Agreement at any time to any party. We may also assign or delegate certain of our rights and responsibilities under this Agreement to Affiliates, independent contractors or other third parties.

19. Notices to Us Regarding the Service.

Except as otherwise stated below, notice to us concerning the Site or the Service must be sent by postal mail to:

First Foundation Bank
e-Banking
18101 Von Karman Ave, Ste. 750
Irvine, CA 92612

We may also be reached at 1-888-830-4199 for questions and other purposes concerning the Service, but such telephone calls will not constitute legal notices under this Agreement.

20. Your Privacy.

Protecting your privacy is very important to us. Please review our Privacy Policy in order to better understand our commitment to maintaining your privacy, as well as our use and disclosure of your information. Our privacy policy can be viewed at www.ff-inc.com/privacy.

21. Privacy of Others.

If you receive information about another person through the Service, you agree to keep the information confidential and only use it in connection with the Service.

22. Eligibility.

The Service is offered only to individual residents of the United States who can form legally binding contracts under applicable law. Without limiting the foregoing, the Service is not offered to minors. By using the Service, you represent that

you meet these requirements and that you agree to be bound by this Agreement.

23. Errors, Questions, and Complaints.

(a) In case of errors or questions about your transactions, you should as soon as possible contact us at the address or phone number provided in the section of this Agreement titled "Notices to Us Regarding the Service".

(b) If you think your transaction history is incorrect or you need more information about a transaction listed in the transaction history, we must hear from you no later than sixty (60) days after the transaction in which the problem or error appears is first posted in the transaction history. You must:

1. Tell us your name,
2. Describe the error or the transaction in question, and explain as clearly as possible why you believe it is an error or why you need more information; and,
3. Tell us the dollar amount of the suspected error.

(c) If you tell us verbally, we may require that you send your complaint in writing within ten (10) Business Days after your verbal notification. We will tell you the results of our investigation within ten (10) Business Days after we hear from you, and will correct any error promptly. However, if we require more time to confirm the nature of your complaint or question, we reserve the right to take up to forty-five (45) days to complete our investigation. If we decide to do this, we will provisionally credit your Eligible Transaction Account within ten (10) Business Days for the amount you think is in error. If we ask you to submit your complaint or question in writing and we do not receive it within ten (10) Business Days, we may not provisionally credit your Eligible Transaction Account. If it is determined there was no error we will mail you a written explanation within three (3) Business Days after completion of our investigation. You may ask for copies of documents used in our investigation. We may revoke any provisional credit provided to you if we find an error did not occur.

24. Indemnification

You shall indemnify, defend and hold harmless Bank and its officers, employees, directors, suppliers and agents, in their individual capacities or otherwise, from and against any Losses arising out of: (i) your negligence; (ii) your failure to comply with applicable law; or (iii) your failure to comply with the terms of this Agreement.

25. Termination and Changes in Terms

We may amend this Agreement and any applicable fees and charges for the Service at any time by posting a revised version on the Site. You may be required to affirmatively accept the revised Agreement in order to continue using the Service. The revised version will be effective at the time it is posted unless a delayed effective date is expressly stated in the revision. Any use of the Service after a notice of change or after the posting of a revised version of this Agreement on the Site will constitute your agreement to such changes and revised versions. Further, we may, from time to time, revise, update, upgrade or enhance the Service and/or related



Private Access Online Business Banking Agreement

applications or material, which may render all such prior versions obsolete. Consequently, we reserve the right to terminate this Agreement as to all such prior versions of the Service, and/or related applications and material, and limit access to only the Service's more recent revisions, updates, upgrades or enhancements. You agree that if you are currently or become a registered user of another of our services, your Service setup or customer profile information, including but not limited to your name, email address and bank account information, may be shared by and with our Affiliates, and we may provide you with the Services as a substitute to or replacement of any service previously provided through another website or platform.

26. Applicable Rules, Laws, and Regulations

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws or provisions. To the extent that the terms of this Agreement conflict with applicable state or federal law, such state or federal law shall replace such conflicting terms only to the extent required by law. Unless expressly stated otherwise, all other terms of this Agreement shall remain in full force and effect. You agree that any claim or dispute you may have against us must be resolved by a court located in Orange County, California. You agree to submit to the personal jurisdiction of such courts for the purpose of litigating all claims or disputes unless said claim is submitted to arbitration. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim between the parties or any of their respective Affiliates arising under this Agreement.

27. Assignment

Bank may assign its rights and/or delegate all or a portion of its duties under this Agreement to a third party. This Agreement is not assignable or transferable by you.

28. Integration

This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement, and all prior agreements, understandings and representations concerning such subject matter are canceled in their entirety. Notwithstanding the foregoing, this Agreement is in addition to any other agreements between you and Bank.

29. Complete Agreement, Severability, Captions, and Survival

You agree that this Agreement is the complete and exclusive statement of the agreement between us, sets forth the entire understanding between us and you with respect to the Services and the portion of the Site through which the Services are offered, and supersedes any proposal or prior agreement, oral or written, and any other communications between us. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. Any terms of this Agreement which by

their nature should survive, will survive the termination of this Agreement. If there is a conflict between the terms of this Agreement and something stated by an employee or contractor of ours (including but not limited to its customer care personnel), the terms of this Agreement will prevail.

30. Waiver

Bank shall not, by the mere lapse of time, without giving notice or taking other action, be deemed to have waived any of its rights under this Agreement. No waiver by Bank of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.

31. Force Majeure

Neither party shall be liable for any loss nor damage due to causes beyond its control, including fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers, or other causes beyond that party's control. Either party may terminate this Agreement immediately on written notice if the other party is prevented from performing its obligations under this Agreement for a period of more than thirty (30) days due to the reasons set forth in this subsection.

32. Restrictions

You may not appropriate any information or material that violates any copyright, trademark or other proprietary or intellectual property rights of any person or entity while using On-Line Banking. You may not gain, or attempt to gain, access to any On-Line Banking and/or On-line Financial Service server, network or data not specifically permitted to you by Bank or its suppliers, and you must not include any obscene, libelous, scandalous or defamatory content in any communications with Bank or its suppliers.

33. Responsibility

Neither Bank nor its suppliers will be liable for any transaction if: (i) you do not have enough money in your account to complete the transaction; (ii) a legal order prohibit withdrawals from your account; (iii) your account is closed or has been frozen; (iv) the transaction would cause your balance to go over the credit limit for any credit arrangement set up to cover overdrafts; (v) you, or anyone you allow, commits fraud or violates any law or regulation in connection with On-Line Banking; (vi) any electronic terminal, telecommunication device or part of the electronic fund transfer system is not working properly; (vii) you did not provide us with complete and correct payment or transfer information; (viii) you did not properly follow the instructions for use of On-Line Banking; (ix) you knew that On-Line Banking was not operating properly at the time you initiated the transaction or payment; (x) there is postal delay; or (xi) circumstances beyond our control (such as fire, flood or improper transmission or handling by a third party) that prevent, hinder or delay the transaction.

34. Fees and Charges for Services

a. Account Fees



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Any financial fees associated with your standard deposit accounts (or other Eligible Transaction Accounts) will continue to apply and supersede this Agreement.

b. Private Access Business Online Banking and Bill Pay

You agree to pay for Private Access Online Business services and modules in accordance with our current fee schedules and as amended from time to time.

c. Additional Charges

There may be a charge for additional transactions and other optional services.

d. Payment Method

You agree to pay all charges and authorize us to deduct the calculated amount from your designated Eligible Transaction Account for these amounts and any additional charges that may be incurred by you. You are responsible for any and all telephone access fees and/or Internet service fees that may be assessed by your telephone and/or Internet service provider.

35. Modifications to Services

The Bank may, from time to time, introduce new on-line services and features. By using those services when they become available, you agree to be bound by the terms contained in the agreement(s) relating to such services, or in this Agreement, and its subsequent amendments, as the case may be.

36. Virus Protection

Bank is not responsible for any electronic virus that you may encounter using the On-Line Banking. We encourage you to routinely scan your computer and diskettes using reliable virus protection product to detect and remove viruses. If undetected and unrepaired, a virus can corrupt and destroy your programs, files and hardware.

37. Exclusions of Warranties.

THE SITE AND SERVICE AND RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, WE DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO ANY PART OF OUR SERVICE, AND OPERATION OF OUR SITE MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF OUR CONTROL. SOME STATES DO NOT ALLOW THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU. THIS PARAGRAPH GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

38. Limitation of Liability.

THE FOREGOING SHALL CONSTITUTE YOUR EXCLUSIVE REMEDIES AND THE ENTIRE LIABILITY OF US AND OUR AFFILIATES AND LICENSORS AND CONTRACTORS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, FOR THE SERVICE AND THE PORTION OF THE SITE THROUGH WHICH THE SERVICE IS OFFERED. YOU ACKNOWLEDGE AND AGREE THAT FROM TIME TO TIME, THE SERVICE MAY BE DELAYED, INTERRUPTED OR DISRUPTED PERIODICALLY FOR AN INDETERMINATE AMOUNT OF TIME DUE TO CIRCUMSTANCES BEYOND OUR REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO ANY INTERRUPTION, DISRUPTION OR FAILURE IN THE PROVISION OF THE SERVICE, WHETHER CAUSED BY STRIKES, POWER FAILURES, EQUIPMENT MALFUNCTIONS, INTERNET DISRUPTION OR OTHER REASONS. IN NO EVENT SHALL WE OR OUR AFFILIATES OR LICENSORS OR CONTRACTORS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE SERVICE CAUSED BY OR ARISING OUT OF ANY SUCH DELAY, INTERRUPTION, DISRUPTION OR SIMILAR FAILURE. IN NO EVENT SHALL WE OR OUR AFFILIATES OR LICENSORS OR CONTRACTORS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF GOODWILL OR LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE SERVICE OR THE PORTION OF THE SITE THROUGH WHICH THE SERVICE IS OFFERED, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND NOTICE WAS GIVEN REGARDING THEM. IN NO EVENT SHALL WE OR OUR AFFILIATES OR LICENSORS OR CONTRACTORS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE SERVICE OR THE PORTION OF THE SITE THROUGH WHICH THE SERVICE IS OFFERED THAT YOU DO NOT STATE IN WRITING IN A COMPLAINT FILED IN A COURT OR ARBITRATION PROCEEDING AS DESCRIBED AS ABOVE WITHIN TWO (2) YEARS OF THE DATE THAT THE EVENT GIVING RISE TO THE CLAIM OCCURRED. THESE LIMITATIONS WILL APPLY TO ALL CAUSES OF ACTION, WHETHER ARISING FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. OUR AGGREGATE LIABILITY AND THE AGGREGATE LIABILITY OF OUR AFFILIATES AND LICENSORS AND CONTRACTORS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, TO YOU AND ANY THIRD PARTY FOR ANY AND ALL CLAIMS OR OBLIGATIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO DIRECT OUT OF POCKET DAMAGES UP TO A MAXIMUM OF



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\$500 (FIVE HUNDRED DOLLARS). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

In addition to the terms previously disclosed, Bank is not responsible for any losses, errors, injuries, expenses, claims, attorney's fees, interest or other damages, whether direct, indirect, special, punitive, incidental or consequential, (collectively, "Losses") caused by On-Line Banking or the use of the On-Line Banking or in any way arising out of the installation, use or maintenance of your personal computer hardware or software, including any software provided by Bank or one of its suppliers. In addition, Bank disclaims any responsibility for any electronic virus(es) you may encounter after installation of such software or use of On-Line Banking. Without limiting the foregoing, neither Bank nor its suppliers shall be liable for any: (i) failure to perform or any Losses arising out of an event or condition beyond their reasonable control, including but not limited to communications breakdown or interruption, acts of God or labor disputes; or (ii) the loss, confidentiality or security of any data while in transit via the Internet, communication lines, postal system or Automated Clearing House network. Bank and its suppliers provide On-Line Banking from their own site and they make no representation or warranty that any information, material or functions included in On-Line Banking are appropriate for use by you in your jurisdiction. If you choose to use On-Line Banking, you do so on your own initiative and are solely responsible for compliance with applicable local laws and regulations. Neither Bank nor its suppliers warrant the adequacy, accuracy or completeness of any information provided as a part of On-Line Banking contained in any third party sites linked to or from Bank's web site.

39. Construction

This Agreement shall be construed equally against the parties regardless of who is more responsible for its preparation. If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.

(END of AGREEMENT)



Business EZ Deposit Module Agreement

This Agreement is an addendum to our Private Access On-Line Business Banking Agreement and all of the terms of that agreement are hereby incorporated by reference. Both Agreements together explain the complete terms and conditions for conducting EZ Business Deposit transactions at First Foundation Bank.

This EZ Business Deposit Service Agreement ("Agreement") is entered into by and between First Foundation Bank, herein referred to as "Bank", and the Client, herein referred to as "Client", subject to the terms and conditions herein.

1. Service Supplied

Bank agrees to supply the EZ Business Deposit, ("Service") and Bank's Equipment/Software, ("Equipment"), to the Client, and both parties agree to abide by the provisions as set forth in this Agreement.

2. Remote Deposit Service

Client requests to deposit funds from a remote location. Client agrees Bank will not initiate remote deposit processing until Client completes and returns this Agreement and one or more Software Administrator Authorization forms designating individuals, "Software Administrators", who will have full access to add, change and delete the authority of "Authorized Representatives" to conduct the client's remote deposit activities. Originators for Remote Deposit entries are any, Software Administrator and Authorized Representatives listed as a user in the client's remote deposit module user records. EZ Business Deposit enrollment is subject to approval by First Foundation Bank. If approved, a two year contract is required which includes a free check scanner. If the service is discontinued prior to second anniversary of services by Client, you will be charged the fee disclosed in the Cash Management Services Fee Schedule for the type of scanner you were assigned at the Service Start Date.

3. Overview and Definitions.

This Agreement states the terms and conditions by which FFB will deliver to Client the Services, as described below.

3.1 "Authorized User" means Client or Authorized representative of Client.

3.2 "Banking Day" means any day which FFB is open to conduct substantially all of its banking services, but shall not include Saturday, Sunday or bank holidays.

3.3 "Capture Device" means any device acceptable to FFB that provides for the capture of images from original Items and for transmission through a clearing process.

3.4 "Check" shall have the definition set forth in Check 21.

3.5 "Check 21" means the Check Clearing for the 21st Century Act, as well as Subpart D of Federal Reserve Board Regulation CC, and to the extent applicable, Subpart A.

3.6 "IRD" or "Image Replacement Document" means (a) a Substitute Check as defined in Check 21; or (b) the paper reproduction that will be created when an Item cannot be converted to an ACH Transaction.

3.7 "Item" means a Check, money order, cashier's check, official check, U.S. Treasury check, or any other payment instrument drawn on a financial institution within the United States from a Payor to Client that may be transmitted as either data or image, and where applicable in the context, includes the electronic image of the front and back of an Item, in addition to other required information as specified by FFB from time to time, in the format specified by FFB from time to time. Notwithstanding the foregoing, it is understood that Client will only be transmitting electronic images of the front and back of Items and not any paper Items. In order for an Item to be processed for deposit, it must be restrictively endorsed in the proper location on the back of the Item with the following words: "Deposit to Account (#)", with the correct account number inserted and signed by the payee.

3.8 "Originator" means any, Software Administrator and Authorized Representatives listed as a user in the client's remote deposit module user records.

3.9 "Payor" means consumers or businesses who make payments to Client by means of Items, but Client shall not be a Payor.

3.10 "Software Administrator" means the individuals assigned by the account holder who have full system access to access to add, change and delete the authority of "Authorized Representatives" to conduct the client's remote deposit activities

3.11 "Service(s)" means the specific service(s) provided by FFB, including electronic check conversion and image archive systems that allow the use of a Capture Device to obtain and transmit the front and back images of Items and accompanying transaction data for the purpose of delivery to FFB for clearing as an IRD. Services also include any applicable support services. The Service shall only be provided for Items received for business purposes that are being deposited into a consumer account at FFB.

3.12 "Service Start Date" means the date that the Services are first utilized by the Client.

3.13 "Technology" means FFB's or its subcontractor's deposit capture applications and processes designed to facilitate the electronic clearing of Items. Said applications are accessed through Capture Devices, utilizing software and hardware provided by or acceptable to FFB, and are proprietary access points to payment processing networks and systems used to complete the clearing of Items. Technology may include but is not limited to Client service support, reports, software, software tools, user interface designs, and documentation, and any derivatives, improvements, enhancements or extensions thereof developed or provided by FFB or its subcontractors and used in the provision of Services hereunder. Any software provided by FFB or its subcontractors pursuant to the Service shall be considered Software as defined in the Software License Agreement.

3.14 "Term" shall mean the term of this Agreement beginning as of the Service Start Date until terminated as provided herein.



Business EZ Deposit Module Agreement

4. Software Administrator Authorization and Authorized User Changes.

Clients are responsible for maintaining accurate and up-to-date authorization limits for each user for their organization to whom they have given remote deposit processing privileges in the Remote Deposit Module. The names and limits of each user shall comprise the only list of authorized users for Business EZ Deposit services.

If a request is made by telephone and immediately confirmed by FAX or email, in an emergency situation, deletion of Software Administrators and Authorized Representatives may be processed by Bank.

5. Service Fees

The Bank's "Cash Management Fee Schedule" lists the Remote Deposit Fees and related costs. Bank will provide written notice to the Client at least thirty (30) days in advance of any increase of fees unless there are increases in governmental or access fees charged to Bank which will be immediately passed onto Client at cost without notice.

6. Payment

Client shall pay such fees as Bank may from time to time establish for Remote Deposit Services. The fees for service may be assessed directly against Client's accounts with the bank or may be charged indirectly upon Client and applied to account analysis earnings credits.

7. Ownership

Client will retain ownership of the Equipment provided by Bank for the Service upon termination of this Agreement by either party for any reason.

8. Deposited Items

All checks deposited through Remote Deposit Service will be deposited under the provisions of the current Client deposit agreement with Bank. In addition, Client agrees to follow Automated Clearing House Rules and Regulations and the provisions of The Check Clearing for the 21st Century Act for all checks deposited where applicable. FFB suggests that you consult your legal counsel on how long you should keep scanned checks before you destroy them. If the absence of guidance from your legal counsel, Client agrees that original checks will be securely stored for at least 90 days after the processing date and should be destroyed within ninety days from the date of deposit unless otherwise agreed to in writing. Client agrees that original checks will not be deposited through the Service more than once Client also agrees to review and validate the accuracy of the check data captured including the amount of the check and the legibility of the check image through the Service. Client agrees to only deposit checks drawn on United States financial institutions through the Service.

9. **Processing of Items.** Images of Items transmitted by Client are not considered received by Bank until Client has received an electronic confirmation of the receipt of the deposit from Bank. However, receipt of the confirmation from Bank does not mean that the transmission was error free or complete. Items transmitted by the Client and received by Bank or its subcontractors by the deadline time(s) specified in Bank's Daily Processing Schedule, shall be

credited to the Client's applicable account on the same Banking Day. Items received by Bank after the deadline times on any Banking Day shall be credited to the Client's applicable account on the next successive Banking Day. Funds from Items deposited under the terms of this Agreement will be available to the Client pursuant to Bank's Funds Availability Policy. Deposits using the Services shall not be transmitted more frequently than twice during any Banking Day.

10. Warranty

Bank warrants that, upon delivery, the Equipment provided will conform to Bank's then current applicable standards. Bank at its own expense, will repair or replace any nonconforming Equipment during the initial term of this Agreement, provided that: (1) the deficiency is attributable solely to Bank and (2) Client notifies Bank of the alleged deficiency within fifteen (15) days of its occurrence. Bank will not be responsible in any manner for any deficiency caused in whole or in part by inaccurate or otherwise deficient data programs, equipment or communication facilities provided by Client or third parties other than Bank. Client shall bear the entire risk of loss, theft, damage or destruction of Equipment from the date of installation until return shipment FOB to Bank. Such loss, theft, damage or destruction of equipment shall not relieve Client of the obligation to make payments or to comply with any other obligation under this Agreement.

11. Confidentiality

Client, its employees and vendors each recognize, acknowledge, and hereby agree that all information or data provided through the Service will be treated as confidential and proprietary and shall not be used or disclosed, in whole or part, to any person, firm, corporation, association, or other entity, except as provided for in this Agreement or as required by law. Client agrees to:

- a. Establishing procedural, physical and electronic safeguards to prevent the compromise or unauthorized disclosure of confidential information, that meets the objectives of the guidelines issued under the Gramm-Leach-Bliley Act.
- b. Restricting access to confidential information to those employees and persons with a need to know confidential information in order to perform their obligations under this Agreement, and by instructing such employees and persons that they must adhere to these "Confidentiality" provisions.
- c. Complying with all current and future regulations with regard to the non-public personal information.
- d. Requiring third party vendors retained or hired to assist in performing duties under this Agreement that they similarly protect and restrict the use of confidential information.

12. Third Party Services

Client acknowledges that, in providing the Service hereunder, Bank may utilize and rely upon certain third party service providers ("TPSPs") to provide database storage, database access, switching and other data communications services to Bank. The Client further acknowledges and agrees that the Client's rights under this Agreement shall be solely and exclusively against Bank, and the Client shall have no right or



Business EZ Deposit Module Agreement

recourse against any TPSP hereunder whatsoever, and hereby waives any and all such rights or recourse, directly or indirectly, against any TPSP, the Department of Financial Institutions of the State of California and the Federal Deposit Insurance Corporation.

13. Termination

Upon acceptance of Client's application by Bank, this Agreement is effective from the date of approval.

13.1 Termination. In addition to the denial, suspension, revocation and termination provisions in this Agreement, Bank may immediately terminate the Service or any portion of the Service if Bank determines that such Service or portion of any Service is in violation of the any other law or regulation, or in its sole discretion and without notice, decides to cease providing this Service. Client may terminate the Service with notice to Bank.

13.2 Obligations upon Termination. Upon the termination of this Agreement for any reason: (a) Client's access to, and use of, the Services will terminate; (b) Client agrees, if requested by Bank to return to Bank any and all software, equipment, documentation, technology or other deliverables provided to Client by Bank, including any copies thereof held by Client; The provisions of sections 14, 15 and 18 shall survive termination of this Agreement.

14. Remedies

The remedies set forth in this Agreement constitute the sole and exclusive remedies for the Client at law and in equity. Bank's maximum liability for damages to Client, from any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, will be limited to the lesser of (1) \$25,000, (2) the total amount payable for the Service during the 12 months before the cause of action arose, or (3) the damages incurred.

In no event will Bank be liable for any damages caused by Client's failure to perform Client's responsibilities, or for any indirect or consequential damages, including, but limited to, loss of profits or anticipated savings, or for any claim made against Client by an employer, employee, agent, or any other party.

15. Indemnification

Each party shall (1) indemnify the other party and all its TPSPs for any damage or claim, including, but not limited to, reasonable attorney's fees and court costs, arising out of a cause of action whereby a party, its agents, employees, or subcontractors, are either directly or indirectly responsible for such action, be it error or omission, under this Agreement, and (2) notify anyone asserting such claims in writing that such other party, and all its TPSPs, have no liability for such actions.

Client indemnifies and holds harmless the Department of Financial Institutions of the State of California and the Federal Deposit Insurance Corporation, their agents and employees, and any commercial database holder, its agent and employees, from any and all claims, including fees, costs, attorney's fees and penalties incurred by or on behalf of Client or any recipient, arising from the use of and information received from the Service as provided in the

Agreement. Should Client receive "bad data", Client must notify Bank within 24 hours of its discovery in order for Bank to provide timely response and prompt resolution thereof.

This indemnification provision shall survive the termination of this Agreement.

16. Payment Processing.

16.1 IRD Processing. Items may be transmitted for electronic processing by other banks or converted to IRDs and transmitted to a printing facility for printing and clearing through traditional paper processing channels, at FFB's sole discretion. The IRDs will be created in accordance with Check 21; alternatively, FFB may process Items as photocopies in lieu of originals, under guidelines established between FFB and Client and applicable industry standards. Items that fail to satisfy the warranties made to FFB by Client, that fail to meet the requirements of FFB or Check 21, or that are otherwise not able to be processed may be charged back to Client's account or returned to Client. Client agrees to be bound by any clearinghouse agreements, operating circular, image exchange agreements to which FFB is a party.

16.2 Processing of Items. Images of Items transmitted by Client are not considered received by FFB until Client has received an electronic confirmation of the receipt of the deposit from FFB. However, receipt of the confirmation from FFB does not mean that the transmission was error free or complete. Items transmitted by the Client and received by FFB prior to the daily deadline shall be credited to the Client's applicable account on the same Banking Day. Items received by FFB after the deadline on any Banking Day shall be credited to the Client's applicable account on the next successive Banking Day. Funds from Items deposited under the terms of this Agreement will be available to the Client pursuant to FFB's Funds Availability Policy. Deposits using the Services shall not be transmitted more frequently than twice during any Banking Day.

16.3 Client Liability. Client shall be solely responsible if any IRD for which Client has been given provisional credit is subject to return or reversal, and neither FFB nor its subcontractors shall be liable or responsible for same. Client acknowledges that all credits received for deposit are provisional, subject to verification and final settlement. Any dishonored Items will be returned as an image of the original or a substitute check as the charged-back item. Information and data reported hereunder: (a) may be received prior to final posting and confirmation and is subject to correction and (b) is for informational purposes only and may not be relied upon. Client agrees that FFB shall have no liability for the content of payment-related information.

17. Intellectual Property Ownership.

This Agreement does not transfer to Client any ownership or proprietary rights in the Technology or any work or any part thereof, and all right, title and interest in and to the Technology will remain solely with FFB or its subcontractors.



Business EZ Deposit Module Agreement

18. Warranties and Disclaimers.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

18.1 Warranty. CLIENT REPRESENTS AND WARRANTS TO FFB: (A) CLIENT HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER AND ALL INFORMATION SUPPLIED BY CLIENT TO FFB IS ACCURATE AND TRUE; (B) CLIENT WILL PROVIDE ALL REASONABLE ASSISTANCE TO FFB AND ITS SUBCONTRACTORS IN PROVIDING THE SERVICES SET FORTH HEREIN; (C) CLIENT AND ANY AUTHORIZED USERS WILL ONLY USE THE SERVICES FOR LAWFUL PURPOSES AND IN COMPLIANCE WITH ALL APPLICABLE RULES AND REGULATIONS AND WITH FFB'S REASONABLE INSTRUCTIONS, RULES, POLICIES, SPECIFICATIONS, TERMS AND CONDITIONS, AND OPERATING PROCEDURES AND WILL NOT VIOLATE ANY LAW OF ANY COUNTRY OR THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; (D) CLIENT HAS ONLY TRANSMITTED ACCEPTABLE ITEMS FOR DEPOSIT AND HAS HANDLED THE ORIGINAL ITEMS FOLLOWING TRANSMISSION TO FFB AS AGREED, DIRECTED BY WITH FFB AND IN ACCORDANCE WITH APPLICABLE LAW; (E) CLIENT IS A PERSON AUTHORIZED TO ENFORCE EACH ITEM OR IS AUTHORIZED TO OBTAIN PAYMENT OF EACH ITEM ON BEHALF OF A PERSON ENTITLED TO ENFORCE AN ITEM; (F) THE ITEMS HAVE NOT BEEN ALTERED; (G) EACH ITEM BEARS ALL APPLICABLE INDORSEMENTS IN A RESTRICTED FORMAT AS DIRECTED BY FFB; (H) ALL THE WARRANTIES SET FORTH IN AND SUBJECT TO THE TERMS OF 4-207 OF THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE OF CALIFORNIA.

19. General

This Agreement is not assignable or transferable by either party without the other party's prior written consent.

Client agrees to use the Equipment in a manner consistent with the terms of this Agreement. Clients are prohibited from utilizing any Equipment provided hereunder in another fashion, manner, or use.

Bank reserves the right, with the appropriate governmental approval, if applicable, to change the Service as it may deem necessary or desirable. Bank reserves the right, without penalty or liability, to withdraw or discontinue any Service from a Client who causes a system to malfunction or from a Client who fails to make changes which Bank determines, in its sole discretion, would prevent future malfunctions. Bank reserves the right to service, repair, exchange, test, and perform reasonable and occasional quality assurance exams on all Equipment, if deemed necessary by Bank, both on and off the Client's premise(s) throughout the duration of the

Agreement. Such exams shall not exceed a frequency of one (1) per month unless mutually agreed upon by both parties. Bank reserves the right to process test system inquiries on Client's behalf and at Client's expense in order to monitor network performance and Quality Assurance. After the initial installation of the Equipment, any relocation thereafter must be approved and/or performed by an authorized Bank representative. Failure to comply will constitute grounds for termination of this Agreement and immediate repossession of all Equipment.

Bank shall not be liable for delays in performance under this Agreement or for failure to perform hereunder by reason of any third party's failure to provide Bank with the data necessary for complete and proper transmission of the Service. In the event that Bank shall be delayed, hindered in or prevented from the performance of any work, service of other acts required of Bank under this Agreement due to strikes, walk-outs, telecommunications equipment and power failures, government restrictions, civil commotion, riots, acts of terrorism, acts of war, fire, or acts of God, all of such activities being beyond the control of Bank, then performances of such work, service, or other acts shall be excused for a period of such delay and the period for the performance of such work, services, or other acts shall be extended for a period equivalent to the period of such delay.

No action, regardless of form, arising out of this Agreement may be brought by either party hereto more than one year after the event giving rise to the cause of action except in the case of nonpayment, in which the applicable statute of limitation for collection actions will be applicable.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Agreement represents the complete and exclusive agreement between the parties with regard to the subject matter hereof and supersedes all prior oral and written communications between the parties. No provision of this Agreement shall be modified unless in writing and signed by an authorized representative of Bank and Client.

If any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remaining provisions shall continue to be of full force and effect.

This Agreement will be governed by and construed in accordance with the laws of the State of California.

(END of AGREEMENT)



Positive Pay Module Agreement

This Agreement is an addendum to our Private Access On-Line Business Banking Agreement and all of the terms of that agreement are hereby incorporated by reference. Both Agreements together explain the complete terms and conditions for conducting Positive Pay activities through First Foundation Bank.

This Positive Pay Module Agreement ("Agreement") is entered into by and between First Foundation Bank, herein referred to as "Bank", and the Client, herein referred to as "Client", subject to the terms and conditions herein.

Definitions

1. Statutory Definitions.

Unless otherwise defined in this Agreement, words or phrases shall have the meanings set forth in UCC Article 3 - "Negotiable Instruments" and UCC Article 4 - "Bank Deposits and Collections".

2. Definitions.

In the Agreement:

- (a) "Agreement" means this Positive Pay Services Agreement as it may be amended from time to time.
- (b) "Authorized Account" means the account(s) of the Client, maintained at the Bank, to which the positive pay services rendered by the Bank, will apply. The Authorized Accounts are listed on Schedule PPS-1 which may be amended from time to time.
- (c) "Available Funds" means funds on deposit in an Authorized Account and available for withdrawal pursuant to the Bank's applicable funds availability policies.
- (d) "Business Day" means every day except Saturdays, Sundays and Federal Bank holidays.
- (e) "Check Issue File" means a record describing checks drawn by the Client on an Authorized Account, provided by the Client to the Bank under Section 2a and in accordance with other specifications provided with this Agreement.
- (f) "Exception Item" means a Presented Check that does not match a check included in a Check Issue File and is identified as an "error".
- (g) "Exception File" means a record describing Exception Items which is provided by the Bank to the Client under Section 2b.
- (h) "Pay/Return Request" means the Client's instructions to the Bank instructing the Bank to pay or return an Exception Item.
- (i) "Presented Check" means a check drawn on an Authorized Account and presented to the Bank for payment through the check collection system.
- (j) "UCC" means the Uniform Commercial Code as in effect in the State of California.

Positive Pay Services

1. Check Issue File.

The Client shall submit a Check Issue File to the Bank as required by Bank from time to time. The Check Issue File shall accurately include the check number, issue date and the exact amount of each check issued on each Authorized Account since the last Check Issue File was submitted. The Client shall upload Client's most current Check Issue File to

the Bank in a format specified by the Bank by Bank cut-off time each Business Day.

2. Payment of Presented Checks and Reporting of Exception Items.

The Bank shall compare each Presented Check by check number and amount against each Check Issue File received by the Bank. On each Business Day, the Bank:

- (a) May pay and charge to the Authorized Account each Presented Check that matches by check number and amount a check shown in any Check Issue File received by Bank;
- (b) Shall make available to the Client an Exception File that identifies any Exception Items received, specifying the complete account number, check number and amount of any such Exception Items; or
- (c) Bank will provide each Business Day to Client a message that there are no Exception Items to report for any business day for which no exception items exist.

3. Payment and Dishonor of Exception Items.

Using a Pay/Return Request, the Client will instruct Bank to either pay or return each Exception Item on the Exception File. The Bank will pay or return the Exception Items in accordance with the instructions provided by Client to Bank as required on valid Pay/Return.

- (a) Default: The Bank shall pay any Exception Items drawn on any Authorized Account, unless the Client instructs the Bank to return to the depository bank such Exception Items using a timely Pay/Return Request.
- (b) The Pay/Return Request shall be provided to the Bank each Business Day in the format specified by the Bank.

4. Client and Bank Communications.

- (a) The Client or the Bank, at its discretion, may each amend any file submitted to the other party by written communication provided for under this Agreement. The amended file or other written communication must be sent in its entirety and not in the form of a partial amendment to the communication originally sent, and be sent in the format and manner, by the deadline(s) established for the original communication. A properly submitted revised communication serves to replace the original communication. However, Client cannot submit a revised Pay/Return Request.
- (b) The Bank shall use only Check Issue Files that comply with Section 2a and have not been revoked in accordance with Section 4a in the preparation of Exception Files under this Agreement.
- (c) The Client shall use only Exception Files that comply with Section 2b and other specifications provided with this Agreement and have not been replaced in accordance with Section 4a in Client's preparation of Pay/Return Requests. The Bank shall not be obligated to comply with any Pay / Return Request received in a format or means, after a deadline, or in a manner not permitted under this Agreement but may instead treat such a Pay/Return Request as though it had not been received.
- (d) The Bank is not responsible for detecting any Client error contained in any Check Issue File or Pay/Return Request sent by the Client to the Bank.

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(e) The deadlines, report or file formats, and information reported may be changed from time to time by Bank at Bank's sole discretion. Bank will use its best efforts to assist Client with any changes made by Bank.

5. Internet Accessibility.

In the event that the internet is not capable of being used by one or both parties for services described in this Agreement, the party not capable of using the internet shall contact the other party as soon as possible after the problem is identified. Bank and Client will use best efforts to ensure that the services described in this Agreement can be performed to ensure appropriate processing on the proper day.

6. Fees and Charges

You agree to promptly pay fees and charges for the use of Positive Pay Service as disclosed in the Bank's Business Services Fee Schedule.

7. Authorized Representatives.

It is the responsibility of the Client to maintain an updated list of names, signatures, phone numbers and account numbers for those individuals authorized to provide instructions for the disposition of items or when issues arise that cannot be addressed by otherwise observing the provisions of this Agreement. Examples of such events include but are not limited to the unavailability of the internet or the presentation of checks subject to this Agreement directly at Bank's Offices. These lists must be updated in the control file of the Positive Pay software by a Systems Administrator selected by client, whenever any of the names identified are deleted or when names are added. Bank will have no liability if no individuals on the list are available to make decisions prior to the established deadlines. The Initial Systems Administrator may be used to indicate the Systems Administrator when starting to use this application.

Remedies

1. UCC Liability.

To the extent applicable, the liability provisions of UCC Articles 3 and 4 shall govern this Agreement, except as modified below.

2. Wrongful Honor.

It shall constitute wrongful honor by the Bank if the Bank pays an Exception Item properly included on a timely Exception File that the Client ordered the Bank to return by submitting a timely Pay/Return Request. In the event that there is wrongful honor:

(a) The Bank shall be liable to the Client for the lesser of the amount of the wrongfully paid Exception Item or the Client's actual damages resulting from the Bank's payment of the Exception Item.

(b) The Bank retains the right to assert the Client's failure to exercise ordinary care or reasonable promptness in examining the applicable statement under UCC sections 3406(a) and 4406(c). The Bank's wrongful honor shall, however, constitute a failure of the Bank to have exercised ordinary care under the loss allocation provisions of UCC sections 3406(b) and 4406(c).

(c) The Bank retains the right to assert the defense that the Client has sustained no actual damages because the Bank's honor of the Exception Item discharged for value an indebtedness of the Client.

3. Wrongful Dishonor.

Except as provided below, it shall constitute wrongful dishonor by the Bank if the Bank dishonors an Exception Item that the Bank has been ordered to pay pursuant to a timely Pay/Return Request.

(a) The Bank's liability for wrongful dishonor of an Exception Item shall be limited to the damages for wrongful dishonor recoverable under UCC Articles 3 and 4.

(b) Notwithstanding Section 3c(1), the Bank shall have no liability to the Client for wrongful dishonor when the Bank, acting in good faith, returns an Exception Item:

- (i) That it reasonably believed was not properly payable; or
- (ii) If there are insufficient Available Funds on deposit in the Authorized Account; or
- (iii) If required to do so by the service of legal process on the Bank or the instructions of regulatory or government authorities or courts.

4. Rightful Payment and Dishonor.

Except as provided in Section 3e:

(a) If the Bank honors an Exception Item in accordance with a timely Pay/Return Request transmitted by the Client or for which no timely Pay/Return Request was received ordering the Bank to return the Exception Item, such honor shall be rightful, and the Client waives any right it may have to assert that the Exception Item was not properly payable under UCC section 4401.

(b) If the Bank dishonors an Exception Item for which a timely Pay/Return Request ordering Bank to pay was received by Bank in accordance with this Agreement, the dishonor shall be rightful, and the Client waives any right it may have to assert that the dishonor was wrongful under UCC section 4402.

(c) The Client agrees that the Bank exercises ordinary care whenever it rightfully pays or returns an Exception Item consistent with the provisions of the Agreement.

(d) Bank shall have no liability if the incorrect action is taken as a result of an encoding error on a Presented Check.

5. Faulty Information.

Subject to the provisions of Section 4 below, the Bank shall be liable for any losses, proximately caused by its honor of a check that was not properly payable, or its dishonor of a check that was properly payable, if the honor or dishonor occurred because the Bank, in accordance with the provisions of Section 2 of this Agreement, should have shown the check on an Exception File but failed to do so; or, showed the check on an Exception File but listed the wrong check number, unless the Bank provided the Client with timely information that disclosed the error.

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6. Client Assistance.

Regardless of wrongful activity by Bank, Client agrees to assist Bank in any way possible in recovering any financial loss.

7. Assignment.

To the extent that the Client suffers a loss under this Agreement, the Bank assigns to the Client any claim that the Bank would have against a depository or collecting bank to

recover the loss, including any claim of breach of warranty under UCC sections 4207, 4208, and 4209.

Limitation of Liability

IN NO EVENT WILL BANK BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, UNDER ANY THEORY OF LIABILITY INCLUDING BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Governing Law Venue

This Agreement shall be governed by the laws of the State of California and applicable Federal law. Each party submits to the jurisdiction of the State of California. Venue for any action arising out of this Agreement shall be in a state court of competent jurisdiction covering Orange County, California. The prevailing party in any such action shall be entitled to the recovery of its reasonable attorney's fees, costs and expenses.

General Provisions

1. Fees.

Client agrees to pay and authorizes Bank to charge Client's account(s) for the service charges which are charged by Bank for the Positive Pay Services or other related services which may later be offered as such fees and charges may be imposed or changed from time to time.

2. Severability.

If any court or tribunal of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

3. Amendments.

Bank may change the terms of this Agreement at any time. Bank will notify Client of the changes as required by law. Client's use of the Positive Pay Services after the effective date of the change will constitute Client's acceptance of and agreement to the change. Client, however, may not amend or change the terms of this Agreement at any time.

4. Assignment.

Subject to 3g, Client may not assign this Agreement or any of the rights or duties hereunder to any person without Bank's

prior written consent. However, the provisions of this Agreement shall be binding upon and inure to the benefit of any legal successor to the Bank or to the Client, whether by merger, consolidation or otherwise.

5. Termination.

Client may terminate this Agreement by written notice sent to Bank at least 14 calendar days prior to the termination date specified in such notice. Bank has the right to terminate services under this Agreement at any time without cause or

notice. Notwithstanding such termination, this Agreement shall remain in full force and effect as to all Presented Checks that have been presented to the Bank prior to the date of termination.

6. Waiver.

The waiver by a party to this Agreement of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by the other party.

7. Entire Agreement.

This Agreement is the entire agreement and understanding between the parties related to the subject matter of this Agreement as of the date hereof and supersedes all prior agreements and understandings between the parties relating to the subject matter of this Agreement. This Agreement shall be subject to the Bank's Business Service Fee and Cash Management Fee Schedules as well as such administrative rules as the Bank may establish and disseminate from time to time governing the services provided under this Agreement. In the event of any inconsistency between the terms of this Agreement and the Bank's Business Service Fee and Cash Management Fee Schedules or the UCC, the terms of this Agreement shall prevail.

8. Headings.

Headings to sections of this Agreement or any Schedules are included for ease of reference and shall not be deemed to create rights, remedies, claims, or defenses arising under this Agreement.

9. Beneficiaries.

This Agreement is for the benefit only of the undersigned parties hereto and is not intended to and shall not be construed as granting any rights to or otherwise benefiting any other person.

10. Force Majeure.

Bank shall not be liable for its failure or delay in the performance of its obligations hereunder due to strikes, wars, terrorism, revolution, fire, flood, communications failures, earthquake, government regulation or other causes beyond its reasonable control; and a reasonable extension of time to perform shall be extended in such circumstances. Such failure shall not be deemed to be a default by Bank

(END of AGREEMENT)

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WireXchange Module Agreement

This Agreement is an addendum to our Private Access On-Line Business Banking Agreement and all of the terms of that agreement are hereby incorporated by reference. Both Agreements together explain the complete terms and conditions for conducting WireXchange transactions at First Foundation Bank.

This Wire Transfer Service Agreement ("Agreement") is entered into by and between First Foundation Bank, herein referred to as "Bank", and the Client, herein referred to as "Client", subject to the terms and conditions herein.

1. Utilization of Wire Services.

Client requests to originate domestic funds transfers and international funds transfers are defined herein as a "Payment Order". Client agrees not to initiate a Payment Order until completing and returning this Agreement and one or more Software Administrator Authorization forms designating individuals ("Software Administrators") who will have full access to add, change and delete the authority of "Authorized Representatives" to conduct the client's wire activities. Originators for verbal Payment Orders are any Client signer on the signature card, Software Administrator and Authorized Representatives listed as a user in the client's wire transfer module user records. Originators for online Payment Orders are any, Software Administrator and Authorized Representatives listed as a user in the client's wire transfer module user records.

2. Wire Transfer Module Security.

Bank shall provide Client with Security Methods for each Originator to use as defined by Bank to verify that a Payment Order, or a communication amending or canceling a Payment Order is the order of an Originator, and to detect any error in the content or transmission of a Payment Order or communication. Client agrees to use security procedures defined by Bank. Client's Originator shall provide Bank with the appropriate security information when initiating, amending or canceling a Payment Order. Client is responsible for the confidentiality of each Originator's Security Method and for insuring that each Client's Originator(s) has only access to their personal Security Method. Bank may execute any Payment Order where it is provided with Client's current security method as its sole authorization. Client is responsible and assumes all liabilities in connection with an Order where valid Security Methods are used. Client agrees to notify Bank immediately if the security procedure is breached. Bank may make and retain for ninety (90) days after execution of the Payment Order recording of all verbal or electronic Orders. Bank may change an Originator's Security Method from time to time upon five (5) days notice.

3. Funds Transfer Risk.

By giving Originator(s) the ability to initiate Payment Orders in accordance with this Agreement, Client assumes certain risks and responsibilities with respect to the actions of those individual(s). Client warrants and agrees that no individual(s) shall be allowed to initiate Payment Orders in the absence of proper supervision and adequate safeguards. Client assumes full responsibility for any and all loss, liability and damages associated with Payment Orders originated by instructions given to Bank by Originator (s). Client agrees to regularly and

promptly review all Payment Order requests. Client reviews shall be conducted by persons other than Originator(s).

4. Originating Transfers.

Client may direct Bank to execute a Payment Order from any of Client's authorized accounts to any other Bank or at another institution that accepts Payment Orders.

Payment Orders, Amendments and Cancellations properly initiated under the terms of this Agreement will be accepted during the normal business hours. (See "Executing Payment Orders").

Upon Bank's receipt of a request by Client's Originator(s) to amend or cancel a Payment Order(s) Bank agrees, if the Payment Order(s) is in Bank's possession and has not been executed, Bank will amend or cancel provided said amendment or cancellation is in accordance with the terms and conditions of this Agreement; or Bank agrees to use its best efforts to amend or reverse a transmitted Payment Order(s).

5. Originating Payment Orders.

Payment Orders may be initiated orally by Client's Originators or placed through Private Access Online Business Banking Wire Module by Originators listed as a Software Administrator or Authorized Representative in the client's wire transfer system user records.

6. Repetitive Payment Orders.

Repetitive Payment Order (i.e. a money transfer request made routinely with instructions remaining constant, except for the date of transmission and the dollar amount may be setup by client using templates they establish in the Online Wire Module. Bank will not create a repetitive payment order for verbal or email wires independently and apart from the Online Wire module.

7. Non-Repetitive Payment Orders.

A non-repetitive Payment Order is any Payment Order not covered by an accepted repetitive Payment Order instruction.

To create a non-repetitive oral payment Order instruction, Originators shall provide Bank with information necessary to process the Payment Order. Generally this will include, but may not be limited to:

- Company Name
- Client's account number from which funds are to be transferred
- Dollar amount to be transferred
- The name, city and state of Beneficiary's bank and/or bank's ABA number
- Beneficiary's name and/or Beneficiary's account number
- Date of transmission

8. Placement of Payment Orders:

Verbal Orders: Bank will orally repeat all aforementioned items to the Originator.

Email Payment Orders: For purposes of confirming Payment Orders placed by email the bank will verify that the



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email was: 1) sent from the email address on file for Originators listed in the client's wire transfer module user records bank for the account from which the funds are being withdrawn and 2) it is within the dollar limits established for that person. Payment Orders that are not in conformance with these conditions will not be processed until it is verified orally with the Originator.

9. Honoring Payment Orders.

Bank will honor a Payment Order(s) only if the Originator making the Payment Order(s) provides Bank with information as required by Bank. Bank will be under no obligation to honor, either in whole or part, any Payment Order which:

- Exceeds Client's collected and available funds on deposit with Bank, or
- Bank has reason to believe Representative may not be authorized by Client, or
- Involved funds subject to a hold dispute or legal process preventing their withdrawal, or
- Is not in accordance with requirements stated in this Agreement.

If Client initiates a Payment Order identifying an intermediary bank or beneficiary's bank only by an identifying number, Bank may rely on the number as proper identification of the intermediary or beneficiary's bank.

If a Payment Order identifies an intermediary bank or beneficiary's bank both by name and identifying number, and the name and number identify different banks, Bank may rely on the number as proper identification.

If Client executes a Payment Order identifying the beneficiary by both name and account number and the name and account number identify different persons, and if the beneficiary's bank accepts the Payment Order and the beneficiary's bank pays the person identified by the number, Client, as the originator, is obliged to pay its Payment Order.

10. Executing Payment Orders.

Except as otherwise set forth in this Agreement, Bank will execute payment orders on the day that the payment order(s) is received, provided that the Payment Order(s) is received by the Bank's Wire Transfer Department's cutoff time and provided the day of receipt is a business day for Bank and for the Federal Reserve Bank.

Bank may record any Payment Order(s) initiated by telephone. The decision to record any telephone conversation shall be solely within Bank's discretion, and Bank assumes no liability for failure to do so. Further, Client acknowledges and agrees the telephone conversations may be monitored and recorded.

In attempting to execute any Payment Order(s), Bank shall use reasonable efforts to utilize the means of transmission specified in Client's request, but in no way shall Bank be limited to such means of transmission.

Bank will notify Client if it cannot execute a Payment Order due to a funds transfer system problem beyond Bank's reasonable control. In the event beneficiary's Bank is not able to receive Payment Orders via Fed-line, Client authorizes Bank to send the Payment Order to an intermediary bank for further credit to Beneficiary's bank. In the event Client does not designate an Intermediary bank, Bank will select an intermediary bank using the current Fed Directory and/or a current Bank directory. Bank shall use the ABA number furnished by Client. In the event the Client furnishes an incorrect ABA number, Bank is not responsible for the incorrect routing of funds.

11. Incoming Payment Orders.

Bank assumes no liability except as set forth herein for accepting incoming Payment Orders and Client agrees to indemnify and hold Bank harmless from and against any claim arising from or in connection with the receipt of an incoming Payment Order.

12. Notification.

Client agrees that notification of each transfer, either in the form of an advice or a periodic account statement, shall be effective and sufficient if mailed by Bank to the mailing address of Client listed on in the account records for the account from which the funds were withdrawn. All notices to the Bank shall be directed to the Wire Transfer Department.

13. Software Administrator Authorization and Authorized User Changes.

Clients are responsible for maintaining accurate and up-to-date authorization limits for each user for their organization to whom they have given wire origination privileges in the Wire Transfer Module. The names and limits of each user shall comprise the only list of authorized users for the Wire Transfer module.

If a request is made by telephone and immediately confirmed by FAX or email, in an emergency situation, deletion of Software Administrators and Authorized Representatives may be processed by Bank.

14. Authorization to Charge Account.

Upon execution of the Agreement and the Schedule attached hereto, Client authorizes Bank to charge Client's accounts in the amount of the Payment Orders.

15. Account Reconciliation.

Completed outgoing or incoming Payment Orders will be reflected on Client's periodic account statement. Client agrees to immediately notify Bank of any discrepancy between Client's records and any advice notification, periodic account statement, or other Bank detail account activity listing.

16. Limitation of Liability.

Bank shall not be liable for any loss arising, directly or indirectly from:

- Any inaccuracy, act or failure to act on the part of any person not directly within Bank's control;
- The negligence or misconduct of Client or any Originator, agent or employee of Client;



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- Any ambiguity in the instructions given to Bank;
- Any other error, failure to delay in the transmission of the payment order which is caused by strikes, civil unrest, and inoperability of communication facilities or circumstances beyond Bank's control or;
- Any acts or omissions of intermediary banks involved in the funds transfer or;
- Bank's "good faith" reliance on instructions from persons purporting to be Originators.
- Bank's "good faith" reliance on the Client maintaining accurate and up-to-date Authorized Software Administrator and Authorized Representatives names and limits in the client's wire transfer system user records.

Client agrees to indemnify, defend and hold Bank, its agents and employees harmless from and against any and all damages, liabilities, actions and claims which result, directly or indirectly from any negligence or fraud of Client or any agent or employee of Client.

17. International Funds Transfer.

Client agrees that Bank may not be held liable for any loss or damage due to any act, error, or omission of any international correspondent, domestic receiving bank or agent, including the failure of the international correspondent, domestic receiving bank or agent to locate, or error in identifying the named payee, or from failure to effect payment, or due to any other cause whatsoever beyond Bank's control, including the demise or failure of the international correspondent's domestic receiving bank or agent.

18. Miscellaneous.

- a) Fees: Client shall pay such fees as Bank may from time to time establish for funds transfer services together with any direct or indirect transfer charges incurred by Bank. The fees and charges may be assessed directly against Client's account(s) with Bank or may be charged indirectly or imposed upon Client with account analysis and balance requirements.
- b) Daily Limit: Unless otherwise agreed by Bank, wires (individual or aggregate) totaling more than \$250,000 in a single day will require bank approval.
- c) Waiver: Bank or Client may delay enforcing its rights under this Agreement without losing them. Any waiver by Bank or Client shall not be deemed to be a waiver of other rights or the same right at another time.
- d) Account Agreement. The Rules and Regulations of Client's Commercial Account with Bank are hereby incorporated by reference. If any inconsistency exists between the Rules and Regulations and the terms and conditions contained in this Agreement, the terms and conditions of this Agreement supersede the Rules and Regulations or any prior Agreement with Client relating to these services.
- e) Amendment and Termination: Either party may terminate this Agreement upon written notice to the other. The indemnification and liability provisions of the Agreement will survive any such termination. Bank may change, amend or alter the terms of this Agreement at any time. The Bank will mail written notice to the Client at

least ten (10) business days before the changes become effective.

- f) Assignment: This Agreement is binding upon and inures to the benefit of the party's successors in interest and permitted assigns. Neither party may assign this Agreement and/or any of its rights and obligations hereunder without prior written consent of the other party.

- g) Governing Law: The terms and conditions of this Agreement are valid and binding upon the parties and shall be governed by and interpreted in accordance with Article 4A entitled "Funds Transfers" of the Uniform Commercial Code, Regulation J of the Board of Governors of the Federal Reserve System and the laws of the State of California. In the event there is a conflict any legal proceeding must be brought in the State of California.

- h) Entirety of Agreement: This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements, promises and representations, whether written or oral between the parties with respect to the subject matter hereof.

(END of AGREEMENT)



ACH Origination Module Agreement

This Agreement is an addendum to our Private Access On-Line Business Banking Agreement and all of the terms of that agreement are hereby incorporated by reference. Both Agreements together explain the complete terms and conditions for conducting Automated Clearing House (ACH) transactions through First Foundation Bank.

This ACH Origination Agreement ("Agreement") is entered into by and between First Foundation Bank, herein referred to as "Bank", and the Client, herein referred to as "Client", subject to the terms and conditions herein.

1. ACH Services

Client requests to originate ACH transfers are defined herein as a "Entry". Client agrees not to initiate an Entry until completing and returning this Agreement and one, or more, Software Administrator Authorization forms designating individuals ("Software Administrators") who will have full access to add, change and delete the authority of "Authorized Representatives" to conduct the client's ACH activities. Originators for Entries are any, Software Administrator and Authorized Representatives listed as a user in the client's ACH module user records.

2. Rules.

2.1 NACHA Rules:

Company shall comply with the Operating Rules of WesPay and the Operating Rules of the National Automated Clearing House Association ("NACHA") in existence as of the date of this Agreement and as amended from time to time (herein collectively referred to as the "Rules"). NACHA rules indicate that originator must provide "receiver authorization" within 10 days if requested by the Bank. Penalties including fines per the NACHA rules, may apply for non-compliance. The terms of this Agreement shall in no way limit Company's obligation of complying with the Rules. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entries" shall have the meaning provided in the Rules and shall also mean (i) the data received from Company hereunder from which Bank prepares Entries, and (ii) for the purposes of Sections 3.5, 9.3 and 9.4 any request from Company for reversal of an Entry.

2.2 User Authorizations

Clients are responsible for maintaining accurate and up-to-date authorization limits for each user in their organization to whom they have given ACH origination privileges in the ACH module. The names and limits of each user shall comprise the only list of authorized users for the ACH module.

2.3 ACH Module Security Requirements

Bank shall provide Client with Security Methods for each Originator to use as defined by Bank to verify that an Entry, or a communication amending or cancelling an Entry is the order of an Originator, and to detect error in the content or transmission of a Payment Order or communication. Client agrees to use security procedures defined by Bank. Client's Originator shall provide Bank with the appropriate security information when initiating, amending or cancelling an Entry. Client is responsible for the confidentiality of each Originator's Security Method and for insuring that each

Client's Originator(s) has only access to their personal Security Method. Bank may execute any Payment Order where it is provided with Client's current security method as its sole authorization. Client is responsible and assumes all liabilities in connection with an Order where valid Security Methods are used. Client agrees to notify Bank immediately if the security procedure is breached. Bank may make and retain for ninety (90) days after execution of the Payment Order recording of all verbal or electronic Orders. Bank may change an Originator's Security Method from time to time upon five (5) days notice

3. Delivery of Entries to Bank.

3.1 Originated Entries.

The Company acknowledges that the NACHA system may not be used in violation of, and that Entries originated by the Company must comply with the law of the United States, including sanctions and laws administered by the Office of Foreign Asset Controls. Further, Company agrees that the NACHA system may not be used to transmit entries that are in violation of the Unlawful Internet Gambling Enforcement Act.

3.2 Delivery Requirements.

Company will be required to complete successfully any required implementation testing prior to commencement of Entries contemplated by this Agreement. All Entries shall be delivered by Company to Bank at the location(s) and in compliance with the formatting and other requirements set forth in Schedule A attached hereto ("Delivery Requirements"). The total dollar amount of Entries transmitted by Company to Bank to settle ("exposure limits") shall not exceed amount set forth on Schedule C without prior approval from Bank.

3.3 Entry Security Procedures.

Company and Bank shall comply with the following security procedure requirements with respect to Entries transmitted by Company to Bank.

The authorization and amount of each Entry (or request for modification or cancellation of a Debit Entry) transmitted by Company (or its agent, if applicable) to Bank shall be in accordance with the security procedures listed below.

(a) Unless otherwise specifically agreed to by Bank and in writing, each Entry or request shall be provided to Bank via file transfer through the Bank's Internet Banking and,
(b) Unless otherwise specifically agreed to by bank and in writing, no Entry or request will be accepted by bank through the Internet Banking unless:

- (i) Initiated by a person whose name appears on the current list of persons authorized to initiate Entries on behalf of Company as maintained by the Bank's Internet Banking and,
- (ii) Verified by a second person whose name appears on the current list of persons authorized to initiate Entries on behalf of Company and further authorized to approve transactions via the Internet Banking system.



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3.4 Receiver Authorizations and Record Retention.

Before the initiation by Company of the first Entry to a Receiver's Account, Company shall obtain from such Receiver an authorization to initiate one or more Entries to the Receiver's Account, which authorization shall comply with the Rules. Each Entry thereafter shall be made pursuant to such authorization, and Company shall initiate no Entry after such authorization has been revoked or the arrangement between Company and such Receiver has terminated. Company shall retain Receiver authorizations for two years after they are terminated and other documents related to Entries for a period of two years. Company shall immediately furnish such authorizations and documents to Bank upon Bank's request.

3.5 Pre Notification.

Company may at its sole option require Bank to deliver a pre notification, in a format and in the medium set forth in Schedule A and/or prescribed by the Rules to Bank to be transmitted to the Participating Institution at which the Receiver's Account is held within the time limits set forth in the Rules. If Company has received notice that such pre notification has been rejected within the prescribed period by the Receiving Deposit/Withdraw Financial Institution ("RDFI"); Company shall not initiate any corresponding Entry until the cause for rejection has been corrected and another pre notification has been submitted to and accepted by the RDFI in accordance with the Rules.

3.6 Cancellation and Amendment of Entries; Reversals.

Company shall have no right to cancel or amend an Entry after it is delivered to Bank. Bank, however, shall use reasonable efforts to act on a request by Company for reversal of an Entry file pursuant to the Rules; provided, however, that Bank shall not be liable for interest or losses if such reversal is not effected. Any request by Company for reversal of an Entry must comply with the Delivery Requirements and the Security Procedures. Company must notify Receiver of the reversal of the Entry and the reason for the reversal of the Entry no later than the Settlement date of the reversal of the Entry. Company shall reimburse Bank for any expenses, losses or damages Bank may incur in effecting or attempting to effect Company's request for the reversal of an Entry.

4. Processing, Transmittal and Settlement by Bank

4.1 Processing, Transmittal and Settlement.

Except as provided in Sections 4, 5 and 9, Bank shall (i) process Entries received from Company to conform with the requirements set forth in this Agreement, (ii) transmit such Entries as an Originating Deposit/Withdraw Financial Institution ("ODFI") to an Automated Clearing House processor ("ACH") selected by Bank in its sole discretion, and (iii) settle for such Entries as provided in the Rules.

4.2 Timing.

Bank shall transmit such Entries to the ACH by the cut-off times of the ACH two business days prior to the Effective Entry Date shown in such Entries, provided (i) such Entries are received from Company by Bank's related cut-off time set provided by Bank on a business day, (ii) the Effective Entry Date is at least 2 days after Company transmission day, and

(iii) the ACH is open for business on the Company transmission day. For purposes of this Agreement, a "business day" is a day on which Bank is open to the public for carrying on substantially all of its business other than a Saturday or Sunday, and Entries shall be deemed received by Bank in the case of transmittal by electronic transmission, when the transmission (and compliance with any related Security Procedure) is completed as provided in the Delivery Requirements.

If any of the requirements of clause (i), (ii) or (iii) of the preceding paragraph is not met, Bank shall use reasonable efforts to transmit such Entries to the ACH by the next Deposit/Withdraw deadline of the ACH following the cutoff time specified Bank which is a business day and a day on which the ACH is open for business.

5. On-Ups Entries.

Except as provided in Section 4, in the case of an On-Ups Entry, Bank shall Credit/Debit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in clauses (i) and (ii) of Section 4.2 are met. If either of those requirements is not met, Bank shall use reasonable efforts to Credit/Debit the Receiver's account in the amount of such Entry on the next business day following such Effective Entry Date.

6. Rejection of Entries.

All ACH Credit originations represent financial obligations for the Company and Bank. The Bank may reject any Entry if Company has failed to comply with its account balance obligations. The balance showing in the Internet Banking system associated with the account designated as the settlement account for the Entries must be sufficient to cover the total originations on the Delivery date as described above. If the settlement account does not have sufficient funds at that time, the Bank may, without any liability, deny, reject or process the Entries. If the entries are processed, the Company is still obligated to pay the Bank for the Entries. Bank may reject any Entry for any reason or for no reason. Bank shall notify Company of such rejection (either electronically, in writing, by telephone, or as otherwise agreed to by Bank and Company) no later than the business day after the Effective Entry Date. Bank shall not be liable to Company for the rejection of any Entry, for Company's non-receipt of a notice given to Company, or for the failure to give notice of rejection at an earlier time than that provided for herein. Bank shall not be required to pay Company interest on a rejected Entry for the period from rejection of the Entry to Company's receipt of the notice of rejection. If an Entry is returned or rejected by the ACH solely due to errors by Bank and sufficient data is available to Bank to reprocess the Entry, Bank shall reprocess the Entry.

7. Notice of Returned Entries.

Bank shall notify Company either electronically, in writing, by telephone, or as otherwise agreed to by Bank and Company of the receipt of an Entry returned by the ACH no later than two (2) business days after Bank's receipt of the returned Entry. Bank shall have no obligation to take other action with respect to a returned Entry.



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8. Provisional Payment.

Company represents to Bank and agrees that it shall be bound by the provision of the Rules making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry, and specifically acknowledges that it has received notice of that Rule and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount Credited/Debited and Company shall not be deemed to have paid the Receiver the amount of the Entry.

9. Security Procedures; Unauthorized and Authorized Entries; Inconsistent Entries.

9.1 Purpose of Security Procedures.

Company agrees that the purpose of the Security Procedures is to verify the authenticity of Entries transmitted to Bank in the name of Company and not to detect an error in the transmission or content of any Entry, and that no security procedure for the detection of such errors has been agreed upon by Bank and Company.

9.2 Protection of Security Procedures.

Company is strictly responsible to establish and maintain procedures to safeguard against unauthorized transmissions. Company warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and of any passwords, codes, security devices and related instructions provided by Bank in connection with the Security Procedures. If Company believes or suspects that any such information or instructions are known or have been accessed by unauthorized persons, Company shall notify Bank immediately. In addition, Company will immediately notify Bank that an employee's authority has been revoked whenever that employee leaves the Company's employ or otherwise is no longer authorized to submit Entries on behalf of the Company.

9.3 Unauthorized Entries.

An Entry delivered to Bank that purports to have been transmitted or authorized by Company shall be effective as Company's Entry as provided herein even if Company did not in fact authorize the Entry, provided Bank has accepted the Entry in compliance with the Security Procedures with respect to such Entry.

9.4 Authorized Entries.

If an Entry received by Bank was transmitted or authorized by Company, it shall be effective as the Company's Entry as provided herein, whether or not Bank complied with the Security Procedures with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with such procedure.

9.5 Inconsistent Entries.

Company acknowledges and agrees that (i) if an Entry describes the Receiver inconsistently by name and account

number, payment of the Entry transmitted by Bank to an RDFI might be made by RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number even if it identifies a person different from the named Receiver, and that Company's obligations to pay the amount of the Entry to Bank is not excused in such circumstances, and (ii) if an Entry describes the RDFI inconsistently by name and identifying number, payment of the Entry might be made by RDFI on the basis of the account number even if it identifies an RDFI different from the named RDFI, and that Company's obligation to pay the amount of the entry to Bank is not excused in such circumstances.

9.6 Commercially Reasonable Standard.

After review of the Entries contemplated under this Agreement, including those aspects to verify the authenticity of Entries delivered by Company to Bank, Company acknowledges and agrees that the Security Procedures as set forth in Schedule B attached hereto are commercially reasonable and are appropriate for Company's needs and will provide Company with the degree of protection relative to Company's ability to accept the inherent risk of the execution by Bank of unauthorized or erroneous instructions received by Bank, as long as Bank acts on the delivery of Entries in good faith and in a fashion consistent with the other terms of this Agreement.

9.7 OFAC.

It shall be the responsibility of the Company that the origination of ACH transactions complies with U.S. law. This includes, but is not limited to sanctions enforced by the Office of Foreign Assets Control (OFAC). It shall further be the responsibility of the Company to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC.)

10. Company Account.

10.1 Payment of Entries.

Company shall at all times maintain sufficient available funds in a Deposit/Withdraw account Company shall maintain at Bank (the "Company Account"), as set forth in Schedule C, to pay the amount of all Credit/Debit Entries, fees, and other amounts which Company is obligated to pay Bank under this Agreement. Bank in its sole discretion may require Company to have sufficient available funds in the Company Account to cover the amount of a Credit/Debit Entry prior to Bank's transmittal of such Entry to an ACH or Bank's Credit/Debiting of a Receiver's account in the amount of an On-Us Entry. In the absence of such a requirement, Company shall be obligated to have such available funds in the Company Account at such time on the Effective Entry Date with respect to such Entry, or in the case of an On-Us Entry, the date of Credit/Debiting the Receiver's account, as Bank, in its discretion, may determine. Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the Company Account, and may Credit/Debit the Company Account for any amount to which Company is entitled under this Agreement. If there are insufficient funds available in the Company Account to pay amounts Company owes Bank

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under this Agreement, Company shall pay any amounts due immediately upon demand, and Company agrees that Bank may debit any account maintained by Company with Bank or that Bank may set off against any amount it owes to Company, in order to obtain payment of Company's obligations.

10.2 Financial Review.

Company further agrees that the Bank at its sole discretion, may from time to time subject Company to a Credit/Debit review process which will assist the Bank in determining whether the single day exposure limits for Credit/Debit Entries are appropriate. Company shall, upon Bank's request, provide to Bank any such information and assistance as Bank may require performing any such evaluation. Personal guarantee of the principal of the Corporation or Company may be required. Collateral may also be required. Failure of Company to meet such standards or to provide such information or assistance when requested shall constitute a breach of this Agreement and shall permit Bank to terminate Agreement.

10.3 Account Type.

Company represents and warrants that the Company Account(s) is, and during the term of this Agreement will be maintained primarily for commercial, and not personal, family or household purposes.

10.4 Reserve Risk Amount.

At Bank's option, Company shall maintain a balance of available funds in the Company Account sufficient to cover its payment obligations under this Agreement, plus a balance of available funds in the Company Account at least equal to the total of returned Entries over the previous 3 month period or such greater amount (the "Reserve Risk Amount") as designated in writing by Bank. This amount will not be less than 50% of the exposure limit. Upon termination of this Agreement by either party, the Company's Accounts, including any Reserve Risk Amount, shall be maintained according to this Agreement for a period of 90 days to ensure there are sufficient available funds to process Entries initiated by Company prior to termination and to ensure adequate funds are available in the case of reversals, refunds or disputes by consumers or other entities.

10.5 Credit Approval.

Due to the provisional nature of ACH transactions, all transactions by Company under this Agreement are subject to initial credit approval and periodic review and approval of Company's creditworthiness. Company will cooperate with such credit reviews and promptly shall provide all documentation reasonably required by Bank, including audited financial statements. Company agrees that Bank may obtain updated credit information, including credit bureau reports, at any time in connection with any review, renewal or extension of this Agreement. Company promptly shall notify Bank of any material change in Company's financial condition. If Company fails to meet Bank's credit requirements, fails to cooperate in providing documentation or fails promptly to notify Bank of any change in Company's financial condition, Bank shall have the right immediately to terminate the Agreement.

11. Company's Representations, Warranties and Indemnification.

Company represents and warrants that for each Entry Company delivers to Bank that: (i) the Entry is a Credit/Debit Entry and complies with the terms of this Agreement and the Rules; (ii) Company has complied with the Rules with respect to the Entry; (iii) there has not been and shall not later be any breach of any warranty of Company as an Originator or of Bank as an ODFI under the Rules; (iv) Company has not breached any warranty contained in this Agreement; and (v) the Entry complies with all local, State and Federal laws and regulations, including but not limited to the Electronic Fund Transfer Act, Regulation E and any applicable regulations issued by the Office of Foreign Assets Control. Company shall indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or warranties.

Company agrees that it shall be deemed to make and renew each representation and warranty made in Section 11 on and as of each day on which it delivers Entries to Bank.

12. Notices and Statements.

Bank is not required to and will not provide Company or Receivers with notice of receipt or Bank's transmittal or Credit/Debiting of Entries. Entries and other debits and Credits/Debits to the Company Account will only be reflected on the periodic statement for the Company Account. Company shall notify Bank of any unauthorized or erroneous Entries or any other discrepancy or error on the periodic statement within fourteen (14) calendar days of receipt of the statement, after which the statement will be conclusively presumed to be correct. If Company fails to notify Bank of any such discrepancy within one year of receipt of such periodic statement, Company shall be precluded from asserting such discrepancy against Bank. Bank shall not be liable for any interest or losses resulting from Company's failure to give such notice.

13. Liability of Bank; Limitations on Liability.

13.1 Performance of Bank.

Bank shall be responsible only for performing the services it expressly agrees to perform in this Agreement, and shall be liable only for direct damages caused by its negligence in performing those services. Bank shall not be responsible for any acts or omissions of Company, including without limitation the amount, accuracy, timeliness of delivery or Receiver authorization of any Entry received from Company, or any act or omission of any other person, including without limitation WesPay, any Federal Reserve Bank, any ACH or transmission or communications facility, any data processor of Company, or any Receiver or RDFI (including without limitation the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent.

13.2 Limit on Damages.

In no event shall Bank be liable for any consequential, special, punitive, or indirect loss or damage which Company may

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incur or suffer in connection with this Agreement, including without limitation loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omissions in performing its services under this Agreement.

13.3 Force Majeure.

Bank shall not be responsible for any failure to act or delay in acting if such failure is caused by legal constraint, the interruption of transmission or communication facilities, computer malfunction or equipment failure, war, emergency conditions, or other circumstances beyond Bank's reasonable control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having violated any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other governmental regulatory authority.

13.4 Interest.

Subject to the foregoing provisions, any liability which Bank may have for loss of interest for an error or delay in performing its services hereunder shall be calculated by using a rate equal to the average Federal Funds rate of the Federal Reserve Bank of New York for the period involved, less any applicable reserve requirements.

14. Indemnification.

Company shall defend, indemnify and hold harmless Bank, and its officers, directors, agents and employees, from and against any and all actions, costs, claims, losses, damages or expenses, including attorneys' fees and expenses, resulting from or arising out of (i) any breach of any of the agreements, representations or warranties of Company contained in this Agreement, or (ii) any act or omission of Company or any other party acting on Company's behalf, including but not limited to the parties described in Section 13.1 above.

15. Payment for Bank Services.

Company shall pay Bank fees for the services provided by Bank under this Agreement in accordance with rate schedules published by Bank from time to time. Such charges do not include, and Company shall be responsible for payment of, any sales, use, or excise, value added, utility or other similar taxes relating to the services provided for in Company's agreement between Bank and Company with respect to the Company Account (the "Account Agreement"). Rate schedules may be changed by Bank upon prior notice to Company.

16. Termination.

Bank may terminate this Agreement immediately by notice to Company, or without notice if Company breaches any of its obligations under this Agreement or the Rules. Without limiting the generality of the foregoing, this Agreement may be terminated by Bank at any time by written notice if (i) Company breaches terms of any other agreement with Bank including an agreement involving the borrowing of money or the extension of Credit/Debit; (ii) Company liquidates, dissolves, merges into or consolidates with another entity, or sells, leases or disposes of a substantial portion of its business or assets; (iii) Company terminates its business, fails generally to pay its debts as they become due, or admits in writing its

inability to pay its debts as they become due, or if any bankruptcy, reorganization, arrangement, insolvency, dissolution or similar proceeding is instituted with respect to Company, or if Company makes any assignment for the benefit of Credit/Debtors or enters into any composition with Credit/Debtors or takes any corporate action in furtherance of any of the foregoing; or (iv) any material adverse change occurs in Company's financial condition or results of operations or ability to perform its obligations hereunder. Company shall promptly give written notice to Bank of the occurrence of any of the foregoing events. Company may terminate this Agreement at any time upon ten-(10) business day's prior notice to Bank. Termination shall not affect any of Bank's rights or Company's obligations under Sections 3.3, 10, 11, 13, and 14 above or related to Entries initiated by Company prior to such termination.

In the event the Company originated debit entries, the Company agrees to maintain an account with the Financial Institution to settle chargebacks for a period of 90 days subsequent to the settlement date of the last debit file originated. The Company will maintain a balance of no less than 5% (percent) of the total origination file.

17. Severability.

In the event that any provision of this Agreement or the application of any such provision to any person or set of circumstances shall be determined to be invalid, unlawful, void, or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

18. Confidentiality.

Company acknowledges that it will have access to certain confidential information regarding Bank's execution of Entries, the Security Procedures and the services contemplated by this Agreement. Company shall not disclose any such confidential information of Bank and shall use such confidential information only in connection with the transactions contemplated by this Agreement.

19. Tapes and Records.

All magnetic tapes, Entries, Security Procedures and records used by Bank for transactions contemplated by this Agreement shall be and remain Bank's property. Bank may, in its sole discretion, make available such information upon Company's request. Company shall pay any expenses incurred by Bank in making any such information available to Company.

20. Audit Review.

Bank reserves the right to audit "Company" for compliance to the NACHA rules.



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21. General Provisions.

21.1 Entire Agreement.

This Agreement and the schedules attached hereto constitute the entire agreement between Bank and Company and supersede all prior agreements. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Company as a result of such violation or amendment. No course of dealing between Bank and Company or usage of trade shall constitute a modification of this Agreement, the Rules or the Security Procedures or constitute an agreement between Bank and Company regardless of whatever practices or procedures Bank or Company may use.

21.2 Amendment.

Except as provided in Section 14, Bank may amend any part of this Agreement, including any schedule hereto, from time to time immediately upon notice to Company.

21.3 Instructions and Notices.

(i) Except as otherwise expressly provided herein, Bank shall not be required to act upon any notice or instruction received from Company or any other person, or to provide any notice or advice to Company or any other person with respect to any matter.

(ii) Bank shall be entitled to rely on any oral or written notice, response, or other communication believed by it to be genuine and to have been provided by an authorized representative of Company whose name is set forth on Schedule B (each an "Authorized Representative"), and any such communication shall be deemed to have been provided by such person on behalf of Company. Company administrator may add or delete any Authorized Representative by accessing the Systems Administrator section on the website. Such notice shall be effective on the second business day following the day of Bank's receipt thereof.

(iii) Any Entry or other data or information received by Bank from or transmitted by Bank to the following data processor selected by Company shall be deemed to have been received from or transmitted to Company, and such processor shall be deemed the agent of Company.

(iv) Except as otherwise provided herein, any notice under this Agreement must be in writing and delivered by express carrier, or sent by United States registered or certified mail addressed to the address in the signature section for each listed party, unless another address is substituted by notice delivered or sent as provided herein.

Notices must comply with any applicable Security Procedures. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

21.4 Third Party Vendors.

If Company transmits Entries through a third party Vendor ("Vendor"), Vendor is the agent of Company. Bank is not responsible for the acts or omissions of Vendor, and Company agrees to hold Bank harmless from any losses caused by acts or omissions of Vendor. Company agrees that the Security Procedure established between Vendors, as Company's agent and Bank is commercially reasonable. Company shall bear all costs associated with the acquisition and maintenance of all systems used by Company in connection with the transactions contemplated by this Agreement, including but not limited to computer hardware and software, transmission lines and facilities, programming and repair, and Bank makes no representations and undertakes no obligations with respect to the same.

21.5 Assignment.

Company may not assign its interest or rights under this Agreement without the prior written consent of Bank, and any purported assignment in violation of this section shall be void.

21.6 Successor and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against Bank or Company hereunder.

21.7 Headings.

Headings used in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

21.8 Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of California, including but not limited to Division 11 of the California Commercial Code.

21.9 Counterparts.

This Agreement may be signed in counterparts all of which shall constitute one agreement.

(END of AGREEMENT)



Lockbox Services Agreement

This Agreement governs the terms and conditions of First Foundation Bank Lock Box services. This agreement is between Parties First Foundation Bank (Bank) and Client whose name is recorded in the signature area of the Cash Management and Online Banking Services Enrollment. In consideration of the mutual agreements herein contained and for valuable consideration the parties hereto agree as follows:

1. Responsibilities

Client shall:

- a. Be accountable for prompt payment of all expenses according to the agreed upon fee schedule for services provided by Bank.

Bank shall:

- a. Establish the PO Box rental service on behalf of the Client, and schedule any and all postal pickups at the designated Post Office at the best time(s) available to maximize the availability of mail in order to meet processing requirements.
- b. Will maintain a service to receive lockbox payments with corresponding documents from Client's billed clients.
- c. Open and sort envelopes picked up from the Post Office, remove the contents, and inspect and process the checks and documentation in accordance with the desires of the Client.
- d. Provide daily web-access to all images, files and reports programmed for Client.

2. Post Office Box Usage.

Post Office Box(es) established pursuant to this Agreement shall be limited in use to remittances only. All other correspondence to Bank must be delivered in accordance with this Agreement.

3. Courier/Delivery Service.

Bank agrees to establish courier services for pickup of remittances from Post Office for delivery to Bank processing center at times deemed appropriate by Bank.

4. Depositing Remittances.

Deposits resulting from processed remittances will be deposited daily as they are received from the Post Office Box.

5. Standard of Care.

Client agrees that Bank's responsibility under this Agreement shall be limited to the exercise of ordinary care. Failure to exercise such ordinary care shall not be inferable by reason of the loss of an item without an additional showing of negligence on the part of Bank.

Establishment of and substantial compliance with the Responsibilities set forth shall be deemed to constitute the exercise of ordinary care; and Client agrees that occasional intentional deviations by Bank from the procedures set forth shall not be deemed a failure to exercise ordinary care in respect to the transactions in which deviations occur. In no event shall Bank be liable to Client for the failure to follow any of the operating procedures set forth including, without limitation, failure to perform any service within the time provided therefore, if failure to perform is due to the occurrence of any of the following events: mechanical failures of Bank equipment except if such failure is the result of Bank's negligence, a power failure, strikes or

layouts, fire or other casualty, riot or civil commotion, windstorms, earthquakes, floods, other Acts of God, delay in transportation, Government regulations or interferences, or any event beyond the control of Bank.

6. Pricing and Payment.

All processing fee(s) for services by Bank are agreed to as attached to this Agreement at inception and as amended from time to time by proper notice by Bank. It is agreed that Bank will charge for services rendered under this Agreement on the date of each analysis statement each month for the prior month's services until said Agreement is modified and agreed upon by both parties.

7. Programming Enhancements.

All additional programming enhancements or modifications must be submitted to Bank with 30 days prior notice. Bank reserves the right to determine length of time required to perform said programming in cases of "excessive" requests. Bank will provide an itemized analysis statement to Client each month detailing said charges upon request. Bank warrants that upon acceptance of this agreement that there are no additional charges except for those disclosed earlier unless otherwise stated. Prices are subject to change upon 30 days prior written notification to Client.

8. Proprietary Rights Indemnification.

Each party ("Indemnifying Party") agrees to defend, indemnify and hold the other party ("Indemnified Party") harmless from and against any and all actions, claims, demands, and liens (collectively, "Actions"), and any costs, liability, losses, damages, judgments and expenses, including reasonable attorney's fees, in connection with any Action for infringement of a copyright, trademark, patent, trade secret or other proprietary right of the Indemnified Party. The Indemnified Party agrees to give the Indemnifying Party prompt notice of any such Action and shall cooperate with the Indemnifying Party in the settlement or defense of any such Action.

9. Confidential Information.

Each party agrees to preserve the confidentiality of Confidential Data belonging to the other party in accordance with the terms and conditions set forth in this agreement what is Exhibit A? Client information must be treated confidentially and in accordance with privacy laws of the State of California and the United States.

10. Trademarks.

Client acknowledges and agrees that no right, title, or interest shall be acquired in the name, service marks, or trademarks of Bank or any of its affiliates, and that upon termination of this Agreement, all use of same by Client shall cease, except as may be otherwise expressly authorized in writing.

11. Relationship Between the Parties.

It is expressly understood and agreed that the relationship of Bank and all its personnel to Client shall be that of a service provider at all times, and nothing herein shall constitute either Bank or Client as the partner, agent, or legal representative of the other, for any purpose whatsoever.



Lockbox Services Agreement

12. Term.

The terms and conditions shall be effective for a period of not less than twelve months from the date this Agreement is signed and shall remain in effect until terminated. If this service is terminated by Client prior to twelve months elapsing, Client agrees to pay Bank the average monthly fee for the preceding number of months for which service was provided for each month of service remaining in the first year of service.

13. Limitation of Liability.

In no event shall either party be liable to the other for special, indirect, incidental or consequential damages.

14. Indemnification.

Each party agrees to indemnify, defend, and hold harmless the other party and its subsidiaries and affiliates, their respective directors, officers, employees, agents, shareholders, successors and assigns, from and against any and all liability, actions, claims, demands, liens, losses, costs, damages, judgments, and expenses, including reasonable

attorneys' fees, directly resulting from any negligence or willful misconduct of such party undertaken pursuant to or in connection with this Agreement.

15. Headings.

The descriptive headings of this Agreement are intended for reference only and shall not affect the construction of this Agreement.

16. Notices.

All notices or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person, or by United States mail, certified or registered, postage prepaid, return receipt requested, or otherwise actually delivered to the appropriate party listed in this agreement.

17. Confidentiality.

Each party acknowledges that each party may make available to the other party information about its or its affiliates' business practices and plans (Confidential Data), and/or certain information and material identified by Bank or Client as "Confidential" (Confidential Data). Confidential Data may be written, oral, recorded, or in electronic form. In the case of Client, Confidential Data includes but is not limited to:

- a. "Proprietary Information" relating to Client that is competitively sensitive material not generally known to the public, including, but not limited to, information that relates to past, present or future research and development, trade secrets, products and services, pricing, marketing, financial matters, or business affairs.
- b. "Client Information" relating to one or more customers of Client, and includes information about any person or entity that obtains or seeks to obtain a product or service from Client.

Each party acknowledges that all Confidential Data furnished by the other is considered proprietary and is a matter of strict confidentiality. Each party also acknowledges that the unauthorized use or disclosure of any Confidential Data could be detrimental to the other. In consideration of this, each party

agrees that it will not distribute, disclose or convey to third parties any Confidential Data except as required by banking regulations or, if to a private third party, upon the other party's prior written approval. It shall not make use of any Confidential Data received from the other party for its own benefit.

The obligations set forth in this section shall not apply to (a) Confidential Data of either party: (i) which has become well known in the trade; or (ii) which was lawfully disclosed to the other party by a third party; or (iii) which was independently developed by the other party; or (iv) which was known to the other party prior to entering into this Agreement; or (b) any disclosure specifically authorized by either party in writing.

18. Privacy Regulations.

Bank agrees it will comply with applicable Privacy Laws. "Privacy Laws" refers collectively to the various federal and state laws and regulations governing the privacy of Client Information. Bank has implemented appropriate measures designed to

- a. Ensure the security and confidentiality Client Information;
- b. Protect against any anticipated threats or hazards to the security or integrity of Client Information; and
- c. Protect against unauthorized access to or use of Client Information that could result in substantial harm or inconvenience to any Client.

19. Invalid Provision.

Should any part of this Agreement, for any reason, be declared invalid, such decision shall not affect the validity of any remaining portion. Such remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion eliminated.

20. Non-Waiver.

No terms or provisions hereof shall be deemed waived and no breach excused, unless such waiver or consent be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

21. Agreement Termination.

This Agreement may be terminated by Bank or Client for any reason upon sixty (60) days written notice to the other. Upon termination of this Agreement, Bank shall assist, for a period of thirty (30) days, Client in the transition of services under this Agreement to Client's new lockbox service provider or in-house solution. Bank agrees to permit Client to reasonably postpone the target termination date for the services being terminated as may be required by unexpected changes in the transition plan.

22. Business Termination.

In the event that either party shall cease conducting business in the normal course, become insolvent, make general assignment for the benefit of creditors, suffer or permit the appointment of a receiver of its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then (at the option of the other party) this Agreement shall terminate and be of no further force and effect and any property or rights of such other party, tangible



Lockbox Services Agreement

or intangible, shall immediately be returned to it.

23. Assignment.

Neither party shall assign this Agreement without the prior written consent of the other party. In the event of assignment, the assigning party shall continue to be responsible for all of its obligations hereunder, and the assigning party guarantees the satisfactory performance by its assignee.

24. UCC Applicability.

Except to the extent that the provisions of this Agreement are clearly inconsistent therewith, this Agreement shall be governed by any applicable provisions of the Uniform Commercial Code. To the extent that this contract entails delivery or performance of services, such services shall be deemed "goods" unless to do so would materially deviate from the transactions contemplated by this Agreement.

25. Amendment.

No amendment of this Agreement shall be effective unless it is in writing and is executed by authorized representatives of both parties to this Agreement.

26. Governing Law.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without regard to conflict of laws principles.

27. Force Majeure.

Neither party shall be liable for any loss nor damage due to causes beyond its control, including fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers, or other causes beyond that party's control. Either party may terminate this Agreement immediately on written notice if the other party is prevented from performing its obligations under this agreement.

28. Construction.

This Agreement constitutes the entire agreement between Bank and Client and it supersedes all prior oral and written agreements with respect to the subject matter contained herein. This Agreement shall be construed equally against the parties regardless of who is more responsible for its preparation. If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.

(END of AGREEMENT)



Multiple Access Agreement

This Agreement explains the terms and conditions for conducting online and onsite banking activities between accounts that may have different ownership and may have different Taxpayer Identification Numbers (TIN) from each other. Banking activities are any activity that affects the cash balances in the accounts and may include but are not limited to transferring balances between accounts and/or depositing a check made payable to one account into another account and/or inquiring on account balances of unrelated accounts and / or sending funds to third parties.

This Multiple Access Agreement ("Agreement") is entered into between First Foundation Bank ("Bank", "we", "us" and "our") and each of the Companies ("Companies", "Company", "you", "client" and "your" identified on Exhibit MAPA to this Agreement. As used in this Agreement, the terms refer to each person signing the Companies covered in this Agreement. Each of the Companies requests the Bank to allow all other Companies to access the Accounts using the Services identified in this Agreement. This Agreement will be effective as to each Account listed in Exhibit MAPA, as of the "Date Added" noted for the Account, also in Exhibit MAPA.

A. Definitions.

As used in this Agreement, and in addition to other defined terms, the terms below will have the following meanings:

1. "Accounts" means the deposit accounts identified on Exhibit MAPA.
2. "Company" means each entity (or individual, if sole proprietorship) identified as a Company on Exhibit MAPA of this Agreement. The Company is the owner of the corresponding Account identified with Company's name on Exhibit MAPA. Company does not mean authorized signers on the account signature card that are non-owners of the Account.
3. "Adverse Event" means:
 - (a) If any Account is subject to levy, attachment or other legal process;
 - (b) If any Company is the subject of voluntary or involuntary bankruptcy proceedings, or any other action for relief of creditors generally;
 - (c) If any Company disputes the authenticity of any Communication, or the authority of the Bank to act or not to act, or the legitimacy of any action taken by the Bank, in connection with any Service performed in response to any Communication received by the Bank;
 - (d) Any one other than Company asserts an interest in an Account, whether or not the interest is later held to be valid; or
 - (e) Any other action or inaction deemed by the Bank to present risk to the Bank.
4. "Authorized User" means:
 - (a) The Company;
 - (b) A Company's employees, officers, designees, agents, administrators, or other persons authorized by the Company to use the System or Services. Any person who has been given authorization by a Company or by another Authorized User (even if in breach of obligations of confidentiality) to use the System or

Services. Authorization is deemed to have been given and is hereby confirmed to have been given by the Company to any person: (A) to whom the Company provides actual authority (for example, by appointment as agent or by resolution of Company's board of directors or governing body); (B) who has apparent authority to act on behalf of Company; or (C) who receives Security Codes or any other security procedures from the Company, any Administrator, or any other person previously given access to the security procedures by the Company. The authorization of an Authorized User continues until the Company notifies the Bank and expressly withdraws authorization for that person to use the security procedures and the Bank has had a sufficient time to act on such information.

5. "Communication" means any message, instruction, payment, electronic data or other communication received by the Bank through the System and in the name of any one or more Company. The term "Communication" includes any requests for transfers between accounts, or other access to or use of the System for purposes of any Services made available in this Agreement.
6. "Commercial Account" means an account that is used for any purpose other than a Consumer Account.
7. "Consumer Account" means an account that is established primarily for personal, family and household purposes.
8. "Services" means those services accessible through the System.
9. "Service Agreements" means the following agreements separately entered between Bank and each Company: Online Banking and Cash Management Agreement.
10. "Other Agreements" means the Bank's Account Terms and Conditions and any other agreement applicable to an Account or Service entered into by and between the Bank and Company, as amended from time to time.
11. "Security Codes" and "security procedures" refers to the authentication systems, tools or methods used by the Bank to authenticate Communications from a Company including any Authorized Users, or their successors.
12. "System" means the system(s) made available by the Bank to Each Company, as described in the Service Agreements.

B. Services.

Each Company acknowledges and agrees that all of the Services available pursuant to its Service Agreements with Bank will be subject to access by all Authorized Users. Accordingly, the Services will be applied or made available to each Company and to all Accounts of each Company on an individual and on a multi-party basis. The Bank may, but is not required to, impose limitations on Each Company that differ from one Company to the next Company. At the Bank's option, a Company's access to or use of the Accounts of another Company may be subjected by Bank to the restrictions applicable to the Company in whose name the



Multiple Access Agreement

Account is held, or to those applicable to the Company seeking access, or to such other restrictions as the Bank may impose.

C. Designation of Accounts.

Each Company acknowledges and agrees that only Commercial Accounts will be accessible through the System and Services contemplated under this Agreement.

D. Other Agreements.

This Agreement supplements the Other Agreements. The Other Agreements are incorporated into this Agreement and made a part of it. The Accounts and all Services used by a Company will continue to be subject to the terms and conditions of the applicable Other Agreement, except as specifically modified in this Agreement.

E. Use of Services.

The Bank will provide, at the express request of each Company on the signature lines provided in Exhibit MAPA, the multiple access service provided under this Agreement between unlike accounts that may or may not be related by common ownership or common signers. Each Company understands that the Security Codes allow active account transaction functionality (i.e., payments, transfers, etc.) between the Accounts and to third parties.

F. Authorization.

Each Company authorizes the Bank to allow each other Company and its Authorized Users access to the Company's Accounts via the System with full authority given to conduct transactions. This may include Services that are made available to other Companies but that are not made available by the Bank directly to the Company whose Accounts are affected. This includes authority granted under this Agreement or under any applicable Other Agreement. Without limiting the foregoing, each Company authorizes the Bank to debit or credit its Accounts and otherwise to act in accordance with Communications received from any other Company or Authorized User.

G. Communication with the Bank.

A Communication received by the Bank through the System will be deemed to be a valid and authorized Communication of the Company named in the 3 of 7 Communication for purposes of any Service requested in the Communication. The Bank is not required to verify the authenticity of any Communication other than through the security procedures set forth in this Agreement, the Service Agreements, or in any applicable Other Agreement. A Communication received by the Bank via the System in the name of the Company will be deemed an authorized Communication, binding on the Company named in the Communication, if the Communication is sent by:

1. Any Authorized User, regardless of whether such individuals are reflected as authorized signers for the Account;
2. Any officer of the Company;
3. Any other employee, designee or other person who has been authorized by the Company to use the System under the terms of this Agreement or of any Other

Agreement, or who is otherwise authorized to bind the Company;

4. Any other person, whether or not such person was authorized to act on behalf of the Company, if the Communication is in the name of the Company and if the Bank verifies the authenticity of the Communication using the security procedures described in this Agreement, the Service Agreements, or in any applicable Other Agreement; or
5. Any person with actual or implied authority to represent or bind the Company, whether by agreement with the Bank or otherwise, to the fullest extent allowed by law (including the law of agency or otherwise).

H. Effect of Communication.

Each Company agrees that the Bank is entitled to act upon any instruction or other Communication received by the Bank through the System from any Company or Authorized User, and may treat that Communication received through the System as valid to the same extent and to the same effect as if it had been received through the System from one of the Companies whose Account will be debited or otherwise is affected. To this end, each Company appoints every other Company, including every other Company's Authorized User, as its agent and attorney in fact for the purpose of making payment orders and providing Communications to the Bank, and agrees to be bound by any payment order or Communication issued through the System by any other Company or Authorized User. Without limiting the foregoing, each Company will be bound by any Communication received by the Bank through the System if the instruction or other Communication is in its own name (or in the name of any other Company); and

1. The payment order or other Communication was actually authorized by the Company; or
2. The Bank verifies the authenticity of the payment order or other Communication using the commercially reasonable security procedures set forth in this Agreement, the Service Agreements, or in any applicable Other Agreement, whether or not the payment order or other Communication was actually authorized by the Company or by any other Authorized User.

I. Signature Restrictions.

Each Company understands that Services may be used to cause transfers of funds (debits and credits) from and to its Accounts without regard to any withdrawal or signature restrictions otherwise applicable to the affected Account. For example, if withdrawals, checks or other access to an Account is subject to dollar limits or multiple signature requirements, these limitations are not applicable to transactions conducted using the Services.

J. Limitation on Services.

Each Company agrees that the Bank may impose restrictions on any Services, with or without cause, at any time and either with notice or without notice to any Company (including those affected by the restriction). Without limiting the foregoing, if an Adverse Event occurs, then the Bank may (but is not obligated to) take any one or more of the following actions in connection with one or more (including possibly all) Accounts:



Multiple Access Agreement

1. Terminate or close Accounts;
2. Restrict or terminate Services in connection with Accounts;
3. Delay availability of funds on deposit in any one (and up to all) Account(s);
4. Freeze funds in any one (and up to all) Account(s) and hold them pending instructions acceptable to the Bank;
5. Interplead funds in Accounts with any court, whether or not the court later determines that interpleader is or is not an authorized action by Bank; or
6. Take any other action to protect the Bank against cost, harm, inconvenience, litigation or otherwise as it sees fit in the Bank's sole discretion.

K. Company Acknowledgements.

Each Company acknowledges and agrees that:

1. The Bank did not, at any time, solicit any of the Companies for activation of this multiple party access service;
2. The Bank is providing the multiple party access service as an accommodation to Each Company and at the express request of Each Company;
3. The Company and not the Bank is responsible for reviewing and understanding any negative impact on the Company that may arise due to the Company's use or allowance of these multiple party access services (for example, loss of any insurance coverage, increased possibility of liability for obligations or actions of other Companies in insolvency or otherwise, and increased losses due to unauthorized transactions);
4. The Company has consulted with their legal counsel and accountant prior to signing up for the multiple party access service; and
5. The Company accepts all risks associated with the use of the multiple party access services by itself and by the other Companies.

L. Bank Liability.

Each Company agrees that the Bank shall not be liable for any special or consequential damages arising out of any action or inaction by the Bank under this Agreement. Without limiting the foregoing, each Company agrees that damages as to any breach by the Bank of any term of this Agreement are speculative and difficult to determine, and thus that the Bank shall in no event be liable to any Company individually or to all Companies in the aggregate for an amount in excess of the lesser of \$5,000 or the actual damages suffered by the Company(ies).

M. Company Representations and Warranties.

The Companies individually represent and warrant to the Bank, at the time of execution of this Agreement and as part of each Communication or use of a Service, that it is the true owner of all funds in the Account associated with its name on the signature lines in Exhibit MAPA to this Agreement, and as follows:

1. The Company has all requisite power and authority to request and authorize this Agreement and the Other Agreements;
2. The Company has duly adopted a resolution authorizing the individual signing Exhibit MAPA on Company's behalf to execute this Agreement on Company's behalf;

3. Each Communication is authorized, valid and binding on the Company when named in the Communication, as provided to the Bank in compliance with all terms and conditions of this Agreement;
4. Any transaction conducted by the Company will not be in violation of any state or federal law (including, but not limited to, California Corporations Code Section 2253, which prohibits making any dividend or distribution of assets except in the cases and in the manner allowed by law, either with the design of defrauding creditors or shareholders or of giving a false appearance to the value of the stock and thereby defrauding subscribers or purchasers); and
5. All corporate or other business formalities (as applicable) have been and will be followed with respect to each transfer of funds, including, but not limited to, proper authorization of all requests and transfers and record keeping requirements with respect to them.

N. Security Procedures.

The security procedures used to verify the authenticity of instructions and Communications by each Company are described in the Service Agreements and equally apply to any successor Authorized Users. By using the Services, each Company acknowledges and agrees that this Agreement and the Service Agreements set forth security procedures for banking transactions that are commercially reasonable and agree to be bound by any instructions, whether authorized or unauthorized, which the Bank executes in compliance with the security procedures, unless the Bank has been notified as described in this Agreement and the Bank has reasonable opportunity to act on such notice.

O. Notice to the Bank.

Each Company will notify the Bank immediately if any representation or warranty made by the Company ceases to be true or if the Company becomes aware of any breach of any representation or warranty by any other Company.

P. Laws and Regulations.

Each Company agrees to comply with all applicable laws, rules and regulations in connection with its use of the System and the Services, including but not limited to, the laws prohibiting illegal internet gambling and the sanctions laws of the United States as administered by the Office of Foreign Asset Controls (OFAC). Each Company agrees to assist the Bank in complying with all laws, rules and regulations applicable to The Companies or to the Bank, the System or the Services.

Q. Indemnification.

Each Company shall jointly and severally, defend, indemnify and hold harmless the Bank and its officers, directors, agents and employees from and against any and all actions, costs, claims, losses, damages or expenses, including attorneys' fees and expenses, resulting from or arising out of any losses due to action or inaction by any Company in the use of the System, the Services, or by the Bank in the performance of its obligations under this Agreement. The obligations of Each Company under this Section are in addition to those provided elsewhere in this Agreement, and are not a limitation on any other obligations of a Company to the Bank (whether under



Multiple Access Agreement

this Agreement, any applicable Other Agreement, at law or in equity).

R. Authorization.

Upon request, each Company agrees to provide appropriate corporate, partnership or other applicable entity authorization, satisfactory to the Bank, verifying the authority of each person shown below in Exhibit MAPA to this Agreement to enter into this Agreement for and on behalf of that Company.

S. Fees.

In addition to other applicable fees that have been separately disclosed in the Bank's Other Agreements, the Company will be charged a multiple access monthly fee of \$0.00.

T. Terms.

Except as specifically modified herein, all other terms and conditions of the Agreement and any Other Agreements governing the use of any of the Accounts remains the same.

U. Amendments and Termination.

The Bank reserves the right to terminate or amend the multiple access services provided under this Agreement, at the Bank's discretion, at any time. The Company may terminate its continued participation in the multiple access services contemplated under this Agreement by signing an Amended Exhibit MAPA and completing the "Date Removed" box for each Account to be removed from the service.

V. Governing Law.

This Agreement shall be governed by California law (other than California conflict of law rules, if any, that might operate to cause the law of another jurisdiction to apply), except to the extent preempted by federal law.

(END of AGREEMENT)



CASH MANAGEMENT FORMS

Software Administrator Authorization

Schedule ACH/EZ Deposit: Application

Multiple Access Parties and Accounts Authorization –
Schedule MAPA

EZ Deposit Equipment Receipt

Resolution of Board of Directors

EXHIBIT "B"



This product was created as part of a joint effort between the Federal Bureau of Investigation, the Financial Services Information Sharing and Analysis Center (FS-ISAC), and the Internet Crime Complaint Center (IC3).

Fraud Alert Involving Unauthorized Wire Transfers to China

26 April 2011

The FBI has observed a trend in which cyber criminals — using the compromised online banking credentials of U.S. businesses — sent unauthorized wire transfers to Chinese economic and trade companies located near the Russian border.

Between March 2010 and April 2011, the FBI identified twenty incidents in which the online banking credentials of small-to-medium sized U.S. businesses were compromised and used to initiate wire transfers to Chinese economic and trade companies. As of April 2011, the total attempted fraud amounts to approximately \$20 million; the actual victim losses are \$11 million.

In a typical scenario, the computer of a person within a company who can initiate funds transfers on behalf of the U.S. business is compromised by either a phishing e-mail or by visiting a malicious Web site. The malware harvests the user's corporate online banking credentials. When the authorized user attempts to log in to the user's bank Web site, the user is typically redirected to another Web page stating the bank Web site is under maintenance or is unable to access the accounts. While the user is experiencing logon issues, malicious actors initiate the unauthorized transfers to commercial accounts held at intermediary banks typically located in New York. Account funds are then transferred to the Chinese economic and trade company bank account.

Victims

Like most account takeover fraud, the victims tend to be small-to-medium sized businesses and public institutions that have accounts at local community banks and credit unions, some of which use third-party service providers for online banking services.

Recipients

The intended recipients of the international wire transfers are economic and trade companies located in the Heilongjiang province in the People's Republic of China. The companies are registered in port cities that are located near the Russia-China border.

The FBI has identified multiple companies that were used for more than one unauthorized wire transfer. However, in these cases the transfers were a few days apart and never used again. Generally, the malicious actors use different companies to receive the transfers. The companies used for this fraud include the name of a Chinese port city in their official name. These cities include: Raohe, Fuyuan, Jixi City, Xunke, Tongjiang, and Dongning. The official name of the companies also include the words "economic and trade," "trade," and "LTD."

The economic and trade companies appear to be registered as legitimate businesses and typically hold bank accounts with the Agricultural Bank of China, the Industrial and Commercial Bank of China, and the Bank of China.

At this time, it is unknown who is behind these unauthorized transfers, if the Chinese accounts were the final transfer destination or if the funds were transferred elsewhere, or why the legitimate companies received the unauthorized funds. Money transfers to companies that contain these described characteristics should be closely scrutinized.

Unauthorized Wire Transfers

The unauthorized wire transfers range from \$50,000 to \$985,000. In most cases, they tend to be above \$900,000, but the malicious actors have been more successful in receiving the funds when the unauthorized wire transfers were under \$500,000. When the transfers went through successfully, the money was immediately withdrawn from or transferred out of the recipients' accounts.

In addition to the large wire transfers, the malicious actors also sent domestic ACH and wire transfers to money mules in the United States within minutes of conducting the overseas transfers. The domestic wire transfers range from \$200 to \$200,000. The intended recipients are money mules, individuals who the victim company has done business with in the past, and in one instance, a utility company located in another U.S. state. The additional ACH transfers initiated using compromised accounts range from \$222,500 to \$1,275,000.

Malware

The type of malware has not been determined in every case but some of the cases involve Zeus, Backdoor.bot, and Spybot. In addition, one victim reported that the hard drive of the compromised computer that was infected was erased remotely before the IT department could investigate.

- Zeus — malware that has the capability to steal multifactor authentication tokens, allowing the criminal(s) to log in to victims' bank accounts with the user name, password, and token ID. This can occur during a legitimate user log-in session.
- Backdoor.bot — malware that has worm, downloader, keylogger, and spy ability. The malware allows for the criminal(s) to access the infected computer remotely and further infect computers by downloading additional threats from a remote server.

- Spybot — an IRC backdoor Trojan which runs in the background as a service process and allows unauthorized remote access to the victim computer.

Recommendation to Financial Institutions

- Banks should notify their business customers of any suspicious wire activity going to the following Chinese cities: Raohe, Fuyuan, Jixi City, Xunke, Tongjiang, and Dongning.
- Wire activity destined for the Chinese cities of Raohe, Fuyuan, Jixi City, Xunke, Tongjiang, and Dongning should be heavily scrutinized, especially for clients that have no prior transaction history with companies in the Heilongjiang province.

For recommendations on how businesses can Protect, Detect, and Respond to Corporate Account Takeovers such as this, please refer to the "Fraud Advisory for Businesses: Corporate Account Take Over" available at <http://www.fsisac.com/files/public/db/p265.pdf>,

Incident Reporting

The FBI encourages victims of cyber crime to contact their local FBI field office, <http://www.fbi.gov/contact/fo/fo.htm>, or file a complaint online at www.IC3.gov.

EXHIBIT "C"

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN, Jr., Governor

DEPARTMENT OF CORPORATIONS
Supporting a Fair & Secure Financial Services Marketplace for all Californians



Jan Lynn Owen
Commissioner of Corporations
Los Angeles, California

IN REPLY REFER TO:
FILE NO: 963-2549

Date: February 26, 2013

To: Efficient Services Escrow Group
Robert Crenshaw, President

Reference: Demand to replace escrow trust account shortage

The trust accounts with First Foundation Bank, account # 6000007267 and account #6000012416, have a shortage of \$1,558,439.00, which is the result of unauthorized wire transfers. As directed by the Special Administrator, you are hereby ordered to replace the known trust account shortage no later than February 27, 2013 by 5 PM. Please provide copies of supporting documentation showing where the replaced funds come from and as well as the deposit confirmation to the trust account. If these funds are not replaced by the designed time, administrative action will be taken which may include the suspension or revocation of your escrow license.

Hand Delivered by: Sultanna Wan, Corporation Examiner

February 26, 2013

Robert Crenshaw, President

• Securities • Franchises • Off-Exchange Commodities • Investment and Financial Services •
• Independent Escrows • Consumer and Commercial Finance Lending • Residential Mortgage Lending •

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EXHIBIT “D”

Stradling

Attorneys at Law

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February 26, 2013

Via Email and Overnight

Ms. Julie Bonnel-Rogers
Dincel Law Group
25 Metro Drive, Sixth Floor
San Jose, CA 95110
jrogers@dincelaw.com

Re: Efficient Services Escrow Group ("Escrow Group")

Ms. Bonnel-Rogers,

My firm represents First Foundation Bank (the "Bank"). I write in response to your letter of today's date, which suggests that \$1,558,439.00 was wire transferred from your client's account as a result of "cyber theft." The Bank and our firm are in the process of investigating these wire transfers, which, even though they occurred in December of 2012 and in January 2013, were only brought to the Bank's attention on Friday afternoon, February 22, 2013. Since your letter offers no facts or evidence supporting the existence of this alleged cyber theft or that First Foundation Bank is responsible in any way, First Foundation Bank cannot honor your request for a bridge loan in this amount or to otherwise replace this money into your client's accounts by 5pm today.

However, we take such allegations seriously and have already opened an investigation into this matter. Based on your letter, we understand that the opening of this investigation will "provide a brief pause" in the Department of Corporation's process, relieving any immediacy.

First Foundation Bank intends to complete its investigation expeditiously. If you have any information supporting your allegations, please provide it to us at your earliest convenience to assist us in our investigation. We will provide you with the results of our investigation into this matter once it is complete.

Very truly yours,



Marc J. Schneider
for STRADLING YOCCA CARLSON & RAUTH, P.C.

EXHIBIT “E”

DINCEL LAW GROUP

APC

ATTORNEYS AT LAW

25 Metro Drive • Sixth Floor
San Jose, CA 95110
tel: (408) 573-5723
fax: (408) 824-1312
jrogers@dincellaw.com

February 27, 2013

Via Facsimile, Electronic Mail and U.S. Mail

Mr. Tony Swartz
First Foundation Bank
18101 Von Karman Avenue, Suite 700
Irvine, CA 92612-0145
Via Facsimile: (949) 732-7430

Re: Efficient Services Escrow Group – \$1,558,439.00 Loss Through Wire
Transfer Fraud/Corporate Account Takeover

**URGENT BUSINESS
REQUEST FOR IMMEDIATE RESPONSE**

Dear Mr. Swartz:

By way of introduction, my name is Julie Rogers, and I am an attorney with the Dincel Law Group. We have been retained by Efficient Services Escrow Group to represent the interest of the company in the aftermath of a corporate account takeover by cyber thieves. We understand that you have been working with Efficient Services Escrow Group to rectify their loss in the amount of \$1,558,439.00.

We are writing to advise of the dire situation that Efficient Services Escrow Group has been placed as a result of the cyber theft. Efficient Services Escrow Group has been subjected to an investigation by the Department of Corporations (DOC) which has resulted in a Demand to replace the missing \$1,558,439.00 within 24 hours by **5pm on February 27, 2013**. If Efficient Services Escrow Group is unable to replace the missing \$1,558,439.00 by **5pm today**, it will be subjected to an administrative action which will include suspension or revocation of escrow licenses and the closing of the business. (Please refer to the February 26, 2013 Demand from the DOC included herewith.) The DOC has indicated its willingness

Mr. Tony Swartz
February 27, 2013
Page 2

to provide a brief pause in its process upon written confirmation that First Foundation Bank is investigating the matter in an expeditious manner. It would be greatly appreciated if First Foundation Bank confirmed its course of action in writing so that Efficient Services Escrow Group can submit the same to the DOC.

The position in which Efficient Services Escrow Group has been placed is **URGENT** and irreparable damage will occur if First Foundation Bank does not respond appropriately and timely. By writing this letter, we are requesting that First Foundation Bank replace the \$1,558,439.00 stolen from Efficient Services Escrow Group accounts at First Foundation Bank by **5pm on February 27, 2013** to assure Efficient Services Escrow Group's continued business operations under the DOC. In the event that First Foundation Bank is not in a position to advance the funds at this juncture, we are requesting, in the alternative, that First Foundation Bank provide an interest free bridge loan for the \$1,558,439.00 stolen from the accounts at First Foundation Bank by **5pm on February 27, 2013**.

Please contact me immediately to discuss this matter.

Very truly yours,

DINCEL LAW GROUP

Julle Bonnel-Rogers

JBR/kkn

EXHIBIT “F”

DEPARTMENT OF CORPORATIONS*Supporting a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Corporations
Los Angeles, California

IN REPLY REFER TO:
FILE NO: 963-2549

February 28, 2013

David Crenshaw, Chief Financial Officer
Efficient Services Escrow group
19671 Beach Boulevard, Suite 207
Huntington Beach, California 92648

Re: Order To Discontinue Escrow Activities

Dear Mr. Crenshaw:

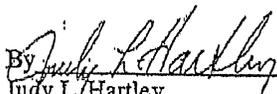
Enclosed is an Order to Discontinue Escrow Activities Pursuant to Section 17415 of the California Financial Code issued by the Department of Corporations against Efficient Services Escrow Group. This Order directs Efficient Services Escrow Group to immediately discontinue all escrow and joint control activities, including the disbursement of funds from the trust account(s). This Order goes into effect as soon as you receive it until further written order of the Commissioner.

By serving copies of this Order on all banks holding funds or property for Efficient Services Escrow Group, the Commissioner hereby requests all these entities refrain from disbursing any such funds or property.

If you have any questions, please contact the undersigned at the telephone number listed below.

Very truly yours,

Commissioner of Corporations

By 
Judy L. Hartley,
Senior Corporations Counsel
Enforcement Division
(213) 576-7604

JLH:jh
enclosure

EXHIBIT "G"

1 MARY ANN SMITH
Deputy Commissioner
2 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
3 DEPARTMENT OF CORPORATIONS
320 West 4th Street, Ste. 750
4 Los Angeles, California 90013-2344
Telephone: (213) 576-7604 Fax: (213) 576-7181

5 Attorneys for Complainant

6
7 BEFORE THE DEPARTMENT OF CORPORATIONS
8 OF THE STATE OF CALIFORNIA

9
10 In the Matter of THE COMMISSIONER OF)
CORPORATIONS OF THE STATE OF)
11 CALIFORNIA,)

File No. 963-2549

12 Complainant,

) ORDER TO DISCONTINUE ESCROW
) ACTIVITIES PURSUANT TO FINANCIAL
) CODE SECTION 17415

13
14 .. vs.

15 EFFICIENT SERVICES ESCROW GROUP,)

16 Respondent.)

17
18 TO: EFFICIENT SERVICES ESCROW GROUP
19 19671 Beach Boulevard, Suite 207
20 Huntington Beach, California 92648

21 FIRST FOUNDATION BANK
18101 Von Karman Avenue, Suite 750
22 Irvine, California 92612

23 THE CALIFORNIA CORPORATIONS COMMISSIONER FINDS THAT:

24 1. On or about February 25, 2013, the Commissioner received information from Escrow
25 Agent's Fidelity Corporation ("EAFC"), the fidelity insurer for the independent escrow industry, that
26 Respondent Efficient Services Escrow Group ("Efficient") had notified EAFC on or about February
27 22, 2013 that Efficient had suffered shortages in its trust accounts totaling \$1,558,339.00. Based
28 upon such information, the Commissioner, by and through staff, commenced a special examination

1 of the books and records of Efficient on or about February 26, 2013.

2 2. The special examination disclosed that Efficient had shortages in its two trust
3 accounts totaling \$1,558,339.00. The special examination disclosed that the shortages were
4 apparently caused when someone “hacked” into a computer of Efficient and thereafter caused
5 monies on deposit in the trust accounts of Efficient to be wired out of the country. The respective
6 dates and amounts of the wires were December 17, 2012 in the amount of \$432,215.00, January 24,
7 2013 in the amount of \$563,112.00, and January 30, 2013 in the amount of \$563,112.00.

8 3. At the time the unauthorized wires occurred in January, 2013, Efficient was in
9 violation of California Code of Regulations, title 10, section 1732.2(a)(3), which requires escrow
10 agent licensees to reconcile their trust account(s) on a monthly basis. The December 31, 2012 bank
11 account statement for the trust account ending in 2416 clearly showed the unauthorized wire in the
12 amount of \$432,215.00 on December 17, 2012.

13 4. The regulatory examination of Efficient recently completed in September 2012
14 disclosed that Efficient was not maintaining its books and records in accordance with the
15 requirements of the Escrow Law, in particular, its trust account books and records. The Department
16 of Corporations’ examiner discussed the violations of the Escrow Law with respect to the
17 maintenance of proper books and records with Efficient during an exit conference. Efficient had
18 been previously warned during its regulatory examination in 2009 regarding its then failure to
19 maintain proper books and records.

20 5. Based upon the findings of the special examination, on or about February 26, 2013,
21 the Commissioner made written demand to Efficient to cure the \$1,558,339.00 shortage in the trust
22 accounts no later than close of business February 27, 2013. Efficient has failed to cure the shortage
23 and continues in its failure to cure the trust account shortage.

24 Based upon the foregoing, Efficient is conducting escrow business in such an unsafe and
25 injurious manner as to render further operations hazardous to the public or to customers.

26 NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING
27 THEREFORE, it is hereby ORDERED, under the provisions of section 17415 of the Financial Code,
28 that Efficient Services Escrow Group and any person having in his or her possession any escrow

1 funds or trust funds immediately discontinue the receipt or disbursement of any escrow or joint
2 control money, documents or other property in its possession, custody or control.

3 This order is to remain in full force and effect until further order of the Commissioner.

4 Section 17415 of the Financial Code provides as follows:

5 (a) If the commissioner, as a result of any examination or from any
6 report made to him or her, shall find that any person subject to this
7 division is in an insolvent condition, is conducting escrow business in
8 such an unsafe or injurious manner as to render further operations
9 hazardous to the public or to customers, has failed to comply with
10 the provisions of Section 17212.1 or 17414.1, has permitted its tangible
11 net worth to be lower than the minimum required by law, has failed to
12 maintain its liquid assets in excess of current liabilities as set forth in
13 Section 17210, or has failed to comply with the bonding requirements
14 of Chapter 2 (commencing with Section 17200) of this division, the
15 commissioner may, by an order addressed to and served by registered
16 or certified mail or personal service on such person and on any other
17 person having in his or her possession or control any escrowed funds,
18 trust funds or other property deposited in escrow with said person,
19 direct discontinuance of the disbursement of trust funds by the parties
20 or any of them, the receipt of trust funds, the delivery or recording of
21 documents received in escrow, or other business operations. No person
22 having in his or her possession any of these funds or documents shall be
23 liable for failure to comply with the order unless he or she has received
24 written notice of the order. Subject to subdivision (b), the order shall remain
25 in effect until set aside by the commissioner in whole or in part, the person
26 is the subject of an order for relief in bankruptcy, or pursuant to Chapter 6
27 (commencing with Section 17621) of this division the commissioner has assumed
28 possession of the escrow agent.

(b) Within 15 days from the date of an order pursuant to subdivision (a),
the person may request a hearing under the Administrative Procedure Act,
Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the
Government Code. Upon receipt of a request, the matter shall be set for hearing
to commence within 30 days after such receipt unless the person subject
to this division consents to a later date. If no hearing is requested within
15 days after the mailing of service of such notice and none is ordered by
the commissioner, the failure to request a hearing shall constitute a waiver
of the right for a hearing. Neither the request for a hearing nor the hearing
itself shall stay the order issued by the commissioner under subdivision (a).

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Dated: February 28, 2013
Los Angeles, CA



JAN LYNN OWEN
Commissioner of Corporations

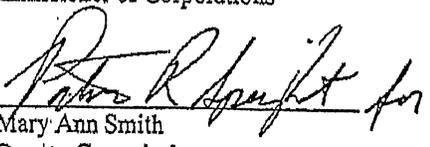
By 
Mary Ann Smith
Deputy Commissioner
Enforcement Division

EXHIBIT “H”

From: Tony Swartz <tswartz@ff-inc.com>
Date: Thu, 28 Feb 2013 14:19:48 -0600
To: Danny Crenshaw <dannyc@efficientescrow.com>
Cc: Ryan Wilkinson <rwilkinson@ff-inc.com>
Subject: Phone Conversation

Hi Danny!

I wanted to archive our conversation that we just concluded.

1. You have given verbal authorization for First Foundation Bank to continue to confirm all outgoing wires with Sandy Jones in the future. Your schedule will not permit you to do this at this time.
2. First Foundation Bank will not be opening any new accounts in the future and the request we received from Sandy Jones on 2/27/2013 will not be honored.
3. First Foundation Bank will be completing our research in the next day or two and at that time regardless of the conclusion we will send you a formal request to close all banking activities. We will give you sufficient time (approximately 10 days) to close the relationship.

Please let me know if your understanding to my comments are different or inaccurate.

Very Best Regards,
Tony



Tony Swartz

COO

First Foundation Bank

tswartz@ff-inc.com

www.ff-inc.com

18101 Von Karman Ave

Suite 750

Irvine, CA 92612

Phone: (949) 202-4150

Fax: (949) 732-7430

Investment Management · Wealth Planning · Consulting · Trust · Banking

EXHIBIT "I"

Julie Rogers, Esq.

From: Criqui, Shane [scriqui@SYCR.com]
Sent: Monday, March 04, 2013 5:39 PM
To: Julie Rogers, Esq.
Cc: Schneider, Marc J.; Kim O. Dincel
Subject: RE: First Foundation Bank
Attachments: Cease and Desist 3.4.pdf

Julie,

Your email contains several inaccuracies.

First, neither my client nor my firm represented that we would have an investigation concluded by today. Indeed, When Marc and I spoke to your partner Mr. Dincel late last week, he informed us that your client would be given a ten (10) day grace period by the DOC.

Second, the recovery of funds was communicated to you as soon as it was communicated to us – which was the very next business day after the funds were recovered.

Third, both myself and Mr. Schneider will be handling the matter.

Fourth, In response to your email (sent immediately after the email below) requesting executed cash management and online banking services contracts – our previous email already provided you with the relevant signature pages as well as the contracts themselves.

Fifth, we understand that your client has been making false and defamatory statements regarding First Foundation. Accordingly, please see the attached cease and desist letter.

Very Truly Yours,

Shane

From: Julie Rogers, Esq. [mailto:jrogers@dincellaw.com]
Sent: Monday, March 04, 2013 4:51 PM
To: Criqui, Shane
Cc: Schneider, Marc J.; Kim O. Dincel
Subject: RE: First Foundation Bank

Shane,

Attached is the letter for Wells Fargo you requested.

We were previously informed by FFBank officials that they was concluding its investigations and would have a decision regarding whether they intended to cover the ESEG's losses no later than this morning. ***Time is a crucial factor*** In this matter as ESEG is under a simultaneous Department of Corporations investigation which places its license and business operation at issue. Can you please promptly explain what ***specific*** steps First Foundation has taken to investigate this matter? Further, can you explain what additional steps must be taken by First Foundation before it determines whether it will cover ESEG's losses?

EXHIBIT “J”



Incident Report:

Client: Efficient Services Escrow

Incident Date(s): 12/17/2012, 01/24/2013, 01/30/2013

Incident Summary:

First Foundation Bank ("FFB") received foreign wire requests on 12/17/2012, 01/24/2013, and 01/30/2013 from Efficient Services Escrow ("ESE"). The three foreign wire requests were sent through FFB's Private Access Business Online Banking system ("Business Online") and totaled \$ 1,558,439.00. The detailed wire history can be seen in Appendix A. An ESE employee named Julie Gardner was the originator of all the wires.

On Friday, February 22, 2013 FFB received a call from ESE officer Sandy Jones. Ms. Jones asked FFB to research the 3 wires. Once FFB provided the wire information to Ms. Jones, she claimed that the wires were fraudulent. FFB attempted to recover the wires on 02/25/2013. The 12/17/2012 wire was recovered on 3/1/2013. Through Wells Fargo, FFB's correspondent bank for these foreign wires, FFB was informed that the Bank receiving the wires sent on 01/24/2013 and 01/30/2013 stated that its client claimed these wires were not fraudulent.

Incident Details:

Client Agreements:

ESE was originally setup to send Wires on 3/1/2010. On behalf of ESE, Robert Crenshaw executed a Wire Transfer Services agreement that covers accounts 6000005519 and 6000005527. FFB converted to a new Online Banking Services vendor on 9/17/2012. To cover the new features available in the system, FFB received new cash management and online banking agreements on 8/14/2012 from ESE. These updated agreements were executed on behalf of ESE by Ms. Jones. The new agreements covered Business Online and Online Wire Services (WX). The agreements covered accounts 6000005519 and 6000007267. The current agreements are available in Appendix I.

Account 6000012416 was opened on 9/11/2012 (the "RBJ Account"). ESE had the RBJ Account set up to be accessible through Business Online with WX. The RBJ Account was added to ESE access on 9/18/2012. The RBJ Account did not have Wire transfer access until 10/10/2012. On 10/10/2012, Faith Hamer, an Escrow Officer and Branch Manager at ESE, sent an email to FFB stating she needed a "wire to go out immediately!!" from the RBJ Account. FFB employee Jimmy Ton assisted Faith with enabling WX access and sending out the first wire from RBJ through Business Online. The email can be viewed on Appendix J.

[Type Office Address Here] ♦ Phone: [Type Phone Number Here] ♦ Fax: [Type Fax Number Here]
www.ff-inc.com ♦ [Type E-mail Here]



International Business:

ESE is an escrow services company and does the majority of their business domestically. ESE has on several occasions requested information about international wire transactions. On 11/02/2012 Faith Hamer sent an email to FFB stating that "I have a wire I need to send out this morning to a bank in China" but that the system was not setup to do so. The EBanking team contacted Ms. Hamer and walked her through creating a Foreign Wire Template on 11/02/2012. This was the first Foreign Wire template created on ESE's Business Online setup. This email is available on Appendix K.

On 11/06/2012, FFB received an email from Ms. Jones requesting First Foundation Bank's SWIFT number. A SWIFT number is required by international banks to send a wire. Ms. Jones stated that ESE was conducting international business and needed to receive a foreign wire. Ms. Jones's email is available on Appendix L.

User Access:

Ms. Jones is a Software Administrator for ESE. This gives her the ability to add, delete and change users as needed for ESE. She has a consistent history of managing the ESE users by deleting old ones, changing account and template access, and adding new employees as they are hired.

Ms. Jones created employee Ms. Gardner on 10/17/2012. On 10/18/2012, Ms. Jones gave Ms. Gardner access to accounts 6000007267 and 6000012416. On 10/18/2012 Ms. Jones also gave Ms. Gardner access to 37 separate existing wire transfer templates. Adding the templates gave Ms. Gardner access to send wire transfers. These access changes can be seen on the File Maintenance Report on Appendix B.

Ms. Jones did not require dual control on wire transfers that Ms. Gardner sent. Dual control allows Ms. Jones to review all wires before they are sent to FFB. It is a control available for all of FFB's wire transfer clients.

Bank regulators require Wire Transfer users to login using layered security. In compliance with this, Ms. Gardner was required to log in using a Vasco security token. The token generates a password that changes every 32 seconds. In addition, Ms. Gardner has to enter a 4 digit PIN number during every login. The token helps prevent the stealing of passwords as they are always changing. It also requires the user to have the physical token in hand to be able to login. The PIN number is something the user has to know. The combination of requiring a physical device, an ever changing Password and a PIN creates a strong authentication password.

Ms. Jones deleted Ms. Gardner from Business Online on 02/20/2013. FFB was informed Ms. Gardner was no longer an employee of ESE on 02/22/2013.



User Activity:

Ms. Gardner was an active user of the Business Online system. An activity report shows that Ms. Gardner's access ID logged in 153 times between 10/18/2012 and 02/20/2013. Ms. Gardner's database Employee ID in the system is 1015.

The EBC Transaction by Employee report shows that Employee 1015, Ms. Gardner logged in on 12/17/2012, 01/24/2013 and 01/30/2013. The report also shows that the activity in those login sessions included a "WIREXCHANGE FOREIGN WIRE" transaction. This is the transaction that shows confirmation of a wire that is sent through Business Online. A confirmation was also produced on each wire. The confirmation numbers for the 3 wires in question are below:

12/17/2012 Wire – 110006538

01/24/2013 Wire – 112100555

01/30/2013 Wire – 112809065

The session activity reports can be viewed in Appendix C. The 12/17/12 and 01/30/13 wires originated from the RBJ Account. The 01/24/13 wire originated from account number 6000007267. Again, the detailed wire history can be seen in Appendix A.

In addition to the confirmation numbers, three employees at ESE received automated email notifications whenever a wire goes out. The three email addresses are sandy@efficientescrow.com, Teresa@efficientescrow.com, and faith@efficientescrow.com. The email addresses belong to Ms. Jones, Teresa Mitchell and Faith Hamer respectively. All three are or were once an employee at ESE. We have received confirmations from our software vendor that these wire notification went out for the wires in question on 12/17/2012, 01/24/2013 01/30/2013. A report was provided from the software vendor and is available in Appendix D.

Ms. Gardner had an active role at ESE sending wires for the firm. From 10/18/2012 to 02/20/2013 Ms. Gardner had sent 80 wires, totalling over \$8.5 million dollars for ESE. Ms. Gardner often sent wires in large amounts in excess of \$250,000. A summary report of the wires that Ms. Gardner sent is available in Appendix E.

Session Location:

The Business Online system tracks the Internet Protocol (IP) address of every session and transaction performed. The IP address can be used to help determine where online activity came from. FFB opened a case to find the IP address of all transactions made from Ms. Gardner on Business Online for the dates 12/17/2012, 01/24/2013, and 01/30/2014. The IP that was reported is 72.54.113.34. The results can be seen on Appendix F.

FFB also requested the IP address of a successful online banking transaction from Ms. Gardner on 01/24/2013 for comparison. There was no reported fraudulent activity reported on a domestic wire sent by Ms.

[Type Office Address Here] ♦ Phone: [Type Phone Number Here] ♦ Fax: [Type Fax Number Here]
www.ff-inc.com ♦ [Type E-mail Here]



Gardner on 01/24/2013 for \$2950. This was the same day as one of the fraudulent wires. The IP Address of the non fraud wire came from 72.54.113.34. This is the same IP address as the other fraudulent transactions in question. The IP report is available on Appendix G. The Session IP reports were created directly by FISERV, FFB's core banking system provider.

IP Address Research:

Adrian Darmawan, the Chief Technology Officer of FFB performed research on the location of the IP Address that was reported in the session activity for Ms. Gardner. The IP Address information can be viewed on Appendix H. In summary, the IP Address for all the Internet banking activity for Ms. Gardner came from 72.54.113.34. This IP is owned by internet service provider (ISP) Cbeyond Communications. They have assigned 72.54.113.34 as a static IP registered to Efficient Services Escrow in Huntington Beach, California.

Incident Findings:

Based on the IP information provided by Fiserv, First Foundation Bank believes that the wire transfer request originated from the Efficient Services Escrow office. The IP Address found on all sessions researched is consistently 72.54.113.34. This IP is registered to Efficient Services Escrow in Huntington Beach, California.

Ms. Gardner was an authorized user. Adequate controls were in place for Ms. Gardner and her login requirements from FFB Business Online. A onetime password is required to login. The password generated by the Vasco Go3 security token is only active for 32 seconds. The user would also have to know the 4 digit PIN number setup by Ms. Gardner on her initial login. Ms. Gardner has the ability to change the PIN number at anytime if she knew it was compromised. These controls create an authentication requirement that meet or exceed bank regulatory requirements.

The transaction and session history of Ms. Gardner suggests the possibility of internal fraud. Ms. Gardner had authorized access to send wires on behalf of ESE. Ms. Gardner did not need a separate approval to send out a wire. It took over 2 months for ESE to inquire on the fraudulent wire from 12/17/2012. FFB sends a notice to 3 different employees at ESE to assist with reconciliation and as an "out of band" method of verification for wires. Out of band verification is also a tool to help prevent fraud and catch fraud early. FFB did not receive any inquiries from ESE regarding these emails. Ms. Gardner's employment with ESE ended with reasons unknown to FFB. Her access from Business Online was removed on 02/20/2013.