

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	CONSENT ORDER,
	)	ORDER FOR
FIRST ELECTRONIC BANK	)	RESTITUTION, AND
SANDY, UTAH	)	ORDER TO PAY
	)	CIVIL MONEY PENALTY
	)	
	)	FDIC-15-104b
(INSURED STATE NONMEMBER BANK)	)	FDIC-15-103k
	)	
_____	)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency under section 3(q) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1813(q), for First Electronic Bank, Sandy, Utah (“Bank” or “FEB”). The FDIC determined that the Bank has engaged in: a) unsafe or unsound banking practices; b) deceptive and unfair acts and practices in or affecting commerce, in violation of section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), by failing to adequately inform consumers of promotion plan requirements concerning deferred interest charges assessed on open-end credit accounts; and c) other violations of law, including the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691 *et seq.*, and its implementing Regulation B, 12 C.F.R. § 1002, and Section 207(b)(2) of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 *et seq.*

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (“CONSENT AGREEMENT”), dated November 19, 2015, that is accepted by the

FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation, to the issuance of this CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively “ORDER”) by the FDIC.

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

**I. CONSENT ORDER**

IT IS HEREBY ORDERED that the Bank, its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from engaging in unsafe or unsound banking practices and violations of law and/or regulations, as more fully set forth in the Compliance Report of Examination dated May 19, 2014 (“Compliance ROE”), and operating in violation of (1) Section 5 by engaging in the deceptive and unfair practices and (2) ECOA by engaging in discrimination on the basis of marital status and receipt of public assistance income, as described below.

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

**Correct Violations of Law**

1. Within 30 days of the effective date of this ORDER, the Bank shall correct all violations of law, as more fully set forth in the Compliance ROE and as described below, and implement procedures to prevent their recurrence. The Bank’s actions as required by this paragraph shall be satisfactory to the Regional Director of the FDIC’s San Francisco Regional Office (“Regional Director”) as determined at subsequent examinations and/or visitations.

### **Unfair and Deceptive Acts and Practices**

2. The Bank shall take all action necessary to eliminate and correct all violations of Section 5 and implement a sufficient CMS to prevent future violations of Section 5.

Specifically, such CMS shall provide that all notices to consumers for purchases under any interest-deferred promotional financing plan (“Promotional Plan”) offered by or through any of the Bank’s strategic partners, including, but not limited to, any welcome letter and periodic statement, clearly and conspicuously disclose:

(a) Both the Promotional Plan expiration date and the periodic statement due date;

(b) If the Promotional Plan expiration date and the periodic statement due date are not the same date, a notice clearly and conspicuously, in close proximity to payment information, alerting the consumer in the periodic statement that deferred interest will be assessed if the Promotional Plan balance is paid on the periodic statement due date rather than the Promotional Plan expiration date; and

(c) If there is more than one Promotional Plan purchase or any other outstanding balance on the account, a notice concerning the application of payments provision in effect impacting payments made prior to the periodic statement due date.

### **Overt Discriminatory Acts and Practices**

3. The Bank shall take all action necessary to eliminate and correct all violations of ECOA and implement a sufficient CMS to prevent future violations of ECOA. Without limiting the generality of the foregoing, such CMS shall provide that all financing programs offered by or through any of the Bank’s strategic partners, or any third party, comply with ECOA.

### **Board and Senior Management Oversight**

4. The Board shall fulfill its fiduciary responsibility to participate in the oversight of the Bank's Compliance Management System ("CMS"), and shall be responsible for the approval of sound policies and objectives and effectively supervise all the Bank's compliance-related activities, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity and offering comparable banking products and services.

5. The Board and senior management shall further review, revise, develop, and/or implement, as necessary, policies and procedures, including monitoring and training programs, that are designed to effect compliance with all applicable consumer protection laws and implementing rules and regulations, regulatory guidance and statements of policy ("Consumer Protection Laws").

### **Compliance Program**

6. Within 90 days from the effective date of this ORDER, the Board and senior management shall further review, revise, develop, and/or implement, as necessary, a sound risk-based CMS, including a comprehensive written compliance program ("Compliance Program") that is designed to effect compliance with all applicable Consumer Protection Laws. The Bank's CMS and Compliance Program shall specifically address compliance with Section 5 and ECOA as it concerns activities related to any of the Bank's strategic partners. The written Compliance Program shall be an organized document that guides the Bank's compliance activities and shall be a source document that serves as a training and reference tool for all Bank employees and management. At a minimum, the written Compliance Program shall provide for and include:

(a) Comprehensive written policies and procedures, including detailed operating procedures and controls designed to prevent violations of Consumer Protection Laws

and prevent associated risks of harm to consumers, particularly with regard to third-party oversight, Section 5, and ECOA;

(b) An effective training program that addresses compliance with Consumer Protection Laws and includes regular, specific, comprehensive training of the Board, senior management, Bank staff, third-party staff, and individuals having responsibilities that relate to Consumer Protection Laws. The training shall be documented and commensurate with individual job functions and duties for appropriate Bank personnel and third-party staff, and shall incorporate training for high-risk compliance areas, including third-party oversight and Section 5. Senior management, bank staff, and/or third-party staff who have direct responsibility for overseeing any strategic partner or implementing any strategic partnership program of the Bank shall receive enhanced training;

(c) An enhanced, well-documented and proactive internal CMS monitoring process that is designed to detect and promptly correct compliance weaknesses within the Bank and third parties, particularly weaknesses that impact consumer accounts;

(d) An effective consumer complaint monitoring process, including the maintenance of adequate records of all written, oral, or electronic complaints or inquiries, formal or informal, received by the Bank and all third parties, and the resolution of the complaints and inquiries; and

(e) Effective independent audit coverage of the Compliance Program and the Bank's compliance with all Consumer Protection Laws and internal policies and procedures.

7. Any changes to the Bank's Compliance Program resulting from the Bank's review of its Compliance Program, as described above, shall be completed within 90 days of the effective date of this Order and shall be reviewed and approved by the Board and recorded in the

Board's minutes. Any subsequent revisions to the Bank's Compliance Program shall also be reviewed and approved by the Board and recorded in the Board's minutes.

8. The Bank shall comply with the written Compliance Program and/or any subsequent modification of the Compliance Program.

9. During the life of this ORDER, the Bank shall regularly perform a full review (not less than annually) of each of its compliance policies and procedures to confirm that they properly address all applicable Consumer Protection Laws.

10. Within 180 days from the effective date of this ORDER, and at least annually thereafter, the Bank shall perform an internal review, including transactional testing, of all compliance monitoring procedures to determine the effectiveness of monitoring procedures to ensure compliance with all Consumer Protection Laws. The review shall include any areas identified as weak in the Compliance ROE. Monitoring procedures should include reviews of activities provided by third parties to ensure regulatory compliance, and reviews of both the Bank's and third parties' complaint processing procedures to ensure identification of trends and root causes for complaints or consumer dissatisfaction.

#### **Audit**

11. Within 90 days from the effective date of this ORDER, the Bank shall schedule independent audits, to be conducted as determined by the Bank's risk assessment, with higher risk areas audited at least annually, to test its compliance with all applicable Consumer Protection Laws. The audits shall be conducted by qualified personnel with experience in conducting independent audits of compliance programs of banks of comparable complexity. The audits shall be performed by individuals or entities that are independent of the areas being audited, *i.e.* individuals or entities who were not involved with the underlying compliance

programs being audited. The scope of the audits identified on the schedule will assess the Bank's CMS and Compliance Program, and at a minimum, shall include the following:

- (a) Define a comprehensive scope to include appropriate aspects of each law or regulation based on a risk analysis;
- (b) Review the Bank and the third-parties' CMS policies and procedures;
- (c) Identify the number of transactions sampled by category or product type;
- (d) Conduct transactional testing that is sufficient to determine the effectiveness of the Bank's and the third-parties' CMS;
- (e) Identify deficiencies;
- (f) Provide descriptions of or suggestions for corrective actions and timeframes for correction; and
- (g) Establish follow-up procedures to verify that corrective actions are implemented and effective.

12. For any compliance area identified as high risk by the Bank's annual Risk Assessment Process, the Board or its Compliance Committee shall determine the need for increased frequency of the audits required by paragraph 11 above. The frequency and scope of such compliance audits, i.e. bi-annually, quarterly or monthly, shall be commensurate with the risk factors and mitigating controls identified.

13. Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Bank's Compliance Committee at the Committee's next regularly scheduled meeting following completion of the independent audit. In addition, the audit report should be thoroughly reviewed by the Bank's Board and fully documented in the Board's minutes.

14. Within 30 days from receipt of the independent auditor's written report by the Board, the Board shall take action to address the audit's findings and develop and implement a plan to:

- (a) Correct any deficiencies noted; and
- (b) Implement any recommendations or explain in a written document and signed by all Board members why a particular recommendation is not being implemented.

#### **Oversight of Third-Party Agreements and Services**

15. Within 30 days from the effective date of this ORDER, the Bank shall further review, revise, develop, and/or implement, as necessary, a third-party oversight program based on the principles set forth in FDIC Financial Institution Letter ("FIL") 44-2008 entitled "Guidance for Managing Third Party Risk." The program shall, at a minimum, provide for:

- (a) Effective training, monitoring, and auditing of all its third parties and strategic partners, that offer financial products or services on behalf of the Bank;
- (b) Prior review and approval of all periodic statements, disclosures, and marketing materials related to Bank products or services that are provided through any third party;
- (c) Reviews of all aspects of the Bank's agreements with third parties and the services performed for the Bank pursuant to these agreements ("Third-Party Agreements");
- (d) Access by Bank employees to all systems or documents necessary to perform their duties, including monitoring, training, and fulfilling regulatory requests;
- (e) Monitoring of Third-Party Agreements to ensure that they are formalized, enforceable, and contain the specific expectations, obligations, and consequences, for both the Bank and the third party; and



(f) Procedures for promptly addressing, documenting, and resolving consumer complaints and inquiries, regardless of the source.

16. The Bank's Compliance Committee shall, on a quarterly basis, submit a written report to the Board addressing whether third parties are in compliance with Third-Party Agreements. The written report shall include potential violations, deficiencies, consumer complaints and inquiries, or other concerns. The Board shall be responsible for ensuring that corrective actions are taken to address the findings of the written report and for assuring that a sound annual review of compliance-related Third-Party Agreements is performed.

## **II. ORDER FOR RESTITUTION**

IT IS FURTHER ORDERED that the Bank provide restitution to consumers as follows:

### **Reserve Account and Payment Floor**

17. Within 10 days from the effective date of the ORDER, the Bank shall reserve or deposit into a segregated deposit account an amount not less than \$56,000 ("Payment Floor") for the purpose of providing restitution as required by this Order for Restitution.

18. The Bank shall make all restitution payments required by the ORDER, regardless of whether the total of such payments exceeds the Payment Floor. If the total of payments is less than the Payment Floor, the excess shall be returned to the Bank's general funds.

### **Restitution Plan for Harmed Consumers**

19. Within 60 days from the effective date of this ORDER, the Bank shall prepare and submit to the Regional Director for review, comment and non-objection prior to implementation, a comprehensive Restitution Plan, including samples of letters to consumers, for all eligible consumers for restitution ("Eligible Consumers"). Eligible Consumers are defined as:

(a) (1) Any consumer with a HELPCard account including a Promotional Plan; (2) who received a periodic statement for a billing cycle starting in July 26, 2011 and before January 9, 2013; (3) who made sufficient payments to pay off the Promotional Plan balance by the next periodic statement due date following the expiration of the Promotional Plan due date (“Sufficient Payment”); and (4) who made the Sufficient Payment no later than March 31, 2013; and

(b) For accounts with more than one Promotional Plan purchase, (1) any consumer with a HELPCard account including a Promotional Plan; (2) who received a periodic statement for a billing cycle starting in July 26, 2011 and before January 9, 2013; (3) who made sufficient payments to pay off a Promotional Plan balance by the Promotional Plan expiration date, regardless of whether the payments made were sufficient to pay the minimum payment due for that cycle, and (4) who made the Sufficient Payment no later than March 31, 2013.

20. The Restitution Plan shall, at a minimum, require the Bank to reimburse deferred interest charges, any interest assessed on such deferred interest charges, and any annual fees assessed as result of the principal balance not being paid in full prior to the expiration of the promotional period for the accounts that were paid in full by the periodic statement due date following the expiration of the promotional period.

#### **Payment of Restitution and Recordkeeping**

21. Within 90 days of receipt of non-objection from the Regional Director, the Bank shall implement the Restitution Plan. Any required cash restitution amount shall be provided to each Eligible Consumer either in the form of a certified or bank check; or by crediting the Eligible Consumer’s existing account, only to the extent that there is an outstanding balance on the existing account. Any restitution due an Eligible Consumer exceeding the outstanding

balance on an existing account shall be paid in the form of a certified or bank check. If an Eligible Consumer's account balance was charged-off during the time period from the expiration of the promotion plan(s) eligible for restitution to the effective date of the ORDER, the amount charged-off may be deducted from cash restitution due the Eligible Consumer. Any restitution due an Eligible Consumer exceeding the amount charged-off shall be paid in the form of a certified or bank check. Restitution provided by the Bank shall not limit consumers' rights in any way.

22. The Bank shall retain for seven (7) years all records pertaining to the Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the Eligible Consumers; the names, contact, and account information of the Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

### **Mailing Refunds**

23. Within 90 days from the effective date of the ORDER, the Bank shall submit to the Regional Director for review a plan for mailing refunds, including the proposed text of letters that shall be sent to Eligible Consumers regarding restitution checks or account credits. Such letters shall include satisfactory language explaining the reason the Bank is sending a restitution check or crediting an account, including that the Bank is sending the check or crediting an account as the result of an enforcement action by the FDIC. The letters shall also include reference to and the web address for any FDIC press release related to the ORDER. The Bank shall then address any comments of the Regional Director, making such changes as may be required to the proposed letters. The letters, incorporating any changes that may be required in response to comments by the Regional Director, shall be sent by mail to all Eligible Consumers

entitled to receive restitution checks and/or credits to their accounts in accordance with the ORDER.

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

25. The Bank shall not undertake collection efforts in the same mailing as that containing any of the restitution checks and/or notification letters. Further, the Bank shall not condition, expressly or by implication, the provision of a credit or cash payment pursuant to this ORDER on the payment of any outstanding debt.

### **Credit Reporting**

26. For all credit reporting agencies to which it regularly reports, within 120 days of the effective date of this ORDER, the Bank, or its agents, shall take all appropriate steps,

consistent with the provisions of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*, to amend and correct all negative incident reports previously made with respect to all Eligible Consumers whose accounts would not have generated a negative incident report but for the imposition of the deferred interest and interest on such deferred interest to be reversed pursuant to the proceeding paragraphs. For purposes of this ORDER, amending or correcting negative incident reports may include requesting that each consumer reporting agency remove the affected trade line or trade lines, or furnishing such agency accurate information regarding the modifications to each account resulting from this ORDER.

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

27. IT IS FURTHER ORDERED that by reason of the violations of law and/or regulations set forth herein, and after taking into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the Bank, the gravity of the violations, the history of previous violations by the Bank, and such other matters as justice may require, including the severity of the risks to and losses of consumers, pursuant to 12 U.S.C. § 1818(i)(2), a penalty of \$250,000 is assessed against the Bank. The Bank shall pay such amount to the Treasury of the United States.

28. IT IS FURTHER ORDERED that the Bank is prohibited from seeking or accepting indemnification from any third party for the civil money penalty assessed and paid in this matter.

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

#### **Progress Reports and Certifications of Compliance**

29. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall provide a written progress report addressing each provision of the

ORDER and detailing the form, manner, results and dates of any actions taken to secure compliance with the provisions of the ORDER to the Regional Director. All progress reports and other written responses to the ORDER shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the Chairman of the Board and the Bank President. The certification of compliance, which will be reviewed and verified through subsequent visitations and/or examinations, shall include the following:

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

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

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

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

#### **Shareholder Notification**

30. The Bank shall either provide a copy of the ORDER to its shareholder, *i.e.* Fry's Electronics, Inc., or otherwise furnish a description of the ORDER in conjunction with the next Board of Directors meeting of its shareholder, in which case such description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Disclosure and Securities Section, 550 17th Street, N.W., Washington, D.C. 20429, for non-objection or comment prior to dissemination to the

Bank's shareholder. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement. This description shall be disseminated in conjunction with the Bank's next shareholder communication and in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The terms "next shareholder communication" and "next shareholder meeting" mean the next shareholder communication and next shareholder meeting immediately after the FDIC provides the Bank with either non-objection of or comments about the description.

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

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

The ORDER shall be effective on the date of issuance.

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

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

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

Issued pursuant to delegated authority this 7<sup>th</sup> day of December, 2015.

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