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

BY _____

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMERCEWEST BANK,

Defendant.

SACR 15-00025
SA CR No. 15

I N F O R M A T I O N

[31 U.S.C. §§ 5318(g), 5322(a), 31
C.F.R. § 1020.320: Willful Failure
to Report Suspicious Transactions]

The United States Attorney charges:

A. INTRODUCTORY ALLEGATIONS

At all times material to this information:

1. Defendant COMMERCEWEST BANK was a federally insured commercial bank based in Irvine, California.

2. The Bank Secrecy Act ("BSA"), Title 31 U.S.C. Sections 5311 et seq., and its implementing regulations, which Congress enacted to address an increase in criminal money laundering activities utilizing financial institutions, required domestic banks, insured banks, and other financial institutions to maintain programs designed to detect and report suspicious activity that might be indicative of money laundering and other financial crimes, and to maintain certain

1 records and file reports related thereto that are especially useful
2 in criminal, tax or regulatory investigations or proceedings.

3 3. Defendant COMMERCEWEST BANK was required to file a
4 Suspicious Activity Report ("SAR") with the Treasury Department for
5 any transaction conducted or attempted by, at, or through the bank,
6 involving or aggregating at least \$5,000 in funds, where the bank
7 knew, suspected, or had reason to suspect that the transaction
8 involved funds derived from illegal activities. Defendant
9 COMMERCEWEST BANK was required to file a SAR no later than 30
10 calendar days after the date of initial detection by the bank of
11 facts that may constitute a basis for filing a SAR.

12 B. DEFENDANT COMMERCEWEST BANK AND ITS RELATIONSHIP WITH A THIRD-
13 PARTY PAYMENT PROCESSOR

14 4. From December 2011 to July 2013, defendant COMMERCEWEST
15 BANK provided banking services to a third-party payment processor
16 (hereinafter referred to as "the processor"). The processor opened
17 accounts at the bank and acted as an intermediary between various
18 merchant-clients and defendant COMMERCEWEST BANK.

19 5. On behalf of its merchant-clients, the processor withdrew
20 funds from the bank accounts of consumers across the country and
21 deposited the funds into accounts at defendant COMMERCEWEST BANK
22 using a payment device called a demand draft (also referred to as a
23 remotely-created check ("RCC") and/or a remotely-created payment
24 order ("RCPO")). A demand draft is a check created not by the
25 account holder but rather by a third party using the account holder's
26 name and bank account information. Unlike ordinary checks, demand
27 drafts are not signed by the account holder. In place of the account
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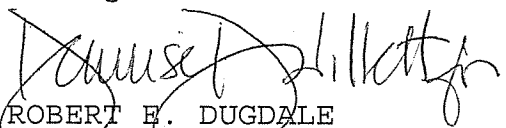
1 holder's signature, a demand draft contains a statement claiming that
2 the account holder has authorized the check. The merchant or third-
3 party payment processor creates a demand draft in the name of the
4 consumer and deposits it in the merchant's - or payment processor's -
5 own bank account. In this case, the processor deposited demand
6 drafts into its account at COMMERCEWEST BANK.

7 6. Many of the demand drafts created by the processor's
8 merchants were reversed or "returned" by consumers' banks.
9 Consumers' banks indicated that the reasons for these returns
10 included: the consumer had not authorized the debit; the merchant
11 had breached a warranty; the account did not exist; the account was
12 closed or frozen; the account owner had blocked checks to a certain
13 payee; or there were insufficient funds to cover the check.
14 "Unauthorized" and "breach of warranty" returns typically require the
15 consumer to fill out an affidavit, signed under penalty of perjury,
16 stating that he or she did not authorize the check. Federal
17 Regulators have warned that high return rates may be indicative of
18 fraudulent practices by the merchant. See, e.g., FDIC Financial
19 Institution Letter: Revised Guidance on Payment Processor
20 Relationships (January 31, 2012) ("Financial institutions should be
21 alert to an increase in consumer complaints about payment processors
22 and/or merchant clients or an increase in the amount of returns or
23 chargebacks, all of which may suggest that the originating merchant
24 may be engaged in unfair or deceptive practices or may be
25 inappropriately obtaining or using consumers' personal account
26 information to create unauthorized RCCs or ACH debits.").

1 C. THE BANK SECRECY ACT VIOLATION

2 11. From in or about April 2012, and continuing through July
3 2013, in the Central District of California and elsewhere, defendant
4 COMMERCEWEST BANK did knowingly and willfully fail to report
5 suspicious transactions, as required by the Secretary of the
6 Treasury.

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