

In the Matter of the Investigation of First Regional Bank

ASSURANCE OF DISCONTINUANCE AND VOLUNTARY COMPLIANCE

This Assurance of Discontinuance and Voluntary Compliance (“Assurance”) is entered into between the Attorneys General of the States of California, New York and Idaho (collectively “Attorneys General”) and First Regional Bank (the “Bank”). The undersigned Attorneys General have caused an inquiry to be made into certain business practices of the Bank. As a result of such inquiry these Attorneys General made the following findings:

1. In 2006 the Attorneys General of California, New York and Idaho commenced investigations into whether certain tobacco businesses were engaging in violations of their state laws, including laws prohibiting or severely restricting the direct delivery of cigarettes and/or other tobacco products to consumers, including: California Business and Professions Code §§ 22963 (Unlawful Sale of Tobacco Products to Minors) and 17200 (Unlawful, Unfair, or Fraudulent Acts or Practices), California Revenue and Taxation Code §§ 30101.7 (Unlawful Non-Face-To-Face Cigarette Sales) and 30165.1 (Unlawful Sale of Tobacco Products in Violation of the California Tobacco Directory Law), Health and Safety Code §§ 14951 (Unlawful Sale of Non-Fire-Safe Cigarettes), and 104557 (Unlawful Sale of Cigarettes in Violation of the Non-participating Manufacturer Escrow Law), New York Public Health Law § 1399-ll (Unlawful Shipment of Cigarettes), New York Public Health Law § 1399-cc (Unlawful Sale of Tobacco Products or Herbal Cigarettes, Rolling Paper or Pipes to a Minor), New York Tax Law § 1814 (Unlawful Evasion of Cigarette and Tobacco Products Tax), New York Penal

Law § 260.21 (Unlawful Dealing with a Child in the Second Degree), New York Penal Law § 115.00 (Criminal Facilitation in the Fourth Degree), New York Penal Law § 20.20 (Criminal Liability of Corporations), New York Executive Law § 63(12) (Repeated and/or Persistent Fraud or Illegality in Business), Title 39, Chapter 57, Idaho Code (Idaho Prevention of Minors' Access to Tobacco Act); Title 39, Chapter 84, Idaho Code (Idaho Tobacco Master Settlement Agreement Complementary Act), 15 U.S.C. § 376 (Jenkins Act), 18 U.S.C. § 1341 (Mail Fraud statute), Federal 18 U.S.C. § 1343 (Wire Fraud statute), 18 U.S.C. §§ 2341 et seq. (Contraband Cigarette Trafficking Act), and/or other federal or state laws or regulations.

2. In or about November 2007, the Attorney General of California caused a subpoena to be served on the Bank pursuant to California Government Code §§ 11180 et seq., seeking documents about whether the Bank may have facilitated the sale of cigarettes and other tobacco products via the Internet and other remote cigarette sales methods in violation of state and federal law.

3. The Bank represents that as of March 1, 2008, it has terminated all Merchants engaged in remote cigarette and tobacco sales.

WHEREAS, in addition to terminating all Merchants engaged in remote cigarette and tobacco sales, the Bank's Board of Directors has adopted a formal policy, effective December 18, 2007, that prohibits the Bank from accepting any new Merchant selling cigarettes and/or tobacco products via the Internet or by other remote means; and

WHEREAS, the Bank offers this Assurance in settlement of any alleged violations and/or facilitating violations, of the respective State laws identified above in paragraph 1, from January 1, 2005, to the Effective Date of this Assurance; and

WHEREAS, the Attorneys General accept the following assurances in lieu of commencing a civil and/or criminal action against the Bank for matters that were the subject of the investigation; and

IT NOW APPEARING THAT the Bank desires to settle and resolve the Investigation without admitting or denying the Attorneys General's findings, the Attorneys General of California, New York, and Idaho and First Regional Bank hereby enter into this Assurance of Discontinuance.

Definitions

In addition to the terms defined throughout this Assurance, the following terms shall have the meanings indicated for purposes of this Assurance:

(1) "Cigarette" shall mean any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette. "Cigarette" also includes "roll-your-own" tobacco, meaning any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making Cigarettes.

(2) "Tobacco Products" shall mean smoking tobacco, cigars, pipe tobacco, smokeless tobacco, chewing tobacco, snuff or any other article or product containing tobacco, but shall not

include Cigarettes, as defined in (1), above.

(3) "Remote Seller" shall mean any Merchant that sells Cigarettes and/or Tobacco Products in a retail non-face-to-face transaction, e.g., by way of the Internet, fax, mail order, or telephone.

(4) "Merchant Agreement" shall mean any agreement, contract, or letter to do business between any Remote Seller and the Bank for services provided by the Bank.

(5) "Third Party Merchant Processor" shall mean a merchant processor that acts as a conduit between a Merchant and the bank.

(6) "Secondary Merchant Processor" shall mean a company that does business as a customer of a Third Party Merchant Processor and aggregates its own customers' Automated Clearing House ("ACH"), credit card or demand draft transactions.

(7) "Merchant" shall mean a direct customer of the bank and/or a Third Party Merchant Processor that in either case processes credit or debit card transactions, ACH payments and/or demand drafts (i.e., an unsigned check –the paper equivalent of an ACH debit) through the Bank.

(8) "Effective Date" shall mean and refer to the date on which this Assurance is fully and completely executed by the parties hereto.

Restrictions

4. The Bank shall at all times maintain and adhere to an express formal policy ("Tobacco Policy") that (i) prohibits the direct or indirect use of its services by any Remote Seller, (ii) prohibits the solicitation or acceptance of business from any Remote Seller, and (iii) causes the immediate termination of any Merchant who is determined to be a Remote Seller or person who used the Bank's services to engage in and/or facilitate the sale and/or delivery of Cigarettes or

Tobacco Products by a Remote Seller.

5. Within thirty (30) days of the Effective Date, the Bank shall (i) publish its Tobacco Policy on its web site, (ii) distribute its Tobacco Policy to each of its Merchants and Third Party Merchant Processors, (iii) revise all internal policies to ensure that they are consistent with the terms of this Assurance, (iv) ensure that each employee is knowledgeable and aware of the Bank's Tobacco Policy, and (v) investigate each Remote Seller and violation of the Bank's Tobacco Policy identified by law enforcement authorities.

6. Before agreeing to provide any services to a Merchant, the Bank shall conduct the necessary due diligence to confirm that the Merchant is not a Remote Seller and does not transact business on behalf of a Remote Seller. Such due diligence includes:

- (A) Obtaining the Merchant's: (i) name (including all "doing business as" names), (ii) address, (iii) phone number, (iv) type of business or principal business activity, (v) taxpayer ID number, (vi) principals' names, (vii) principals' addresses, (viii) principals' phone numbers, (ix) principals' taxpayer ID numbers, (x) geographic location, (xi) web site address, and (xii) sales history;
- (B) Conducting a background check of the Merchant and its principals by, at a minimum, doing the following: (i) reviewing the Merchant's web site, advertising, products, and services; (ii) cross-checking the Merchant's provided information; (iii) verifying the information provided by the Merchant with external agencies having the ability and expertise to provide such verification (e.g., the Better Business Bureau, Dunn & Bradstreet, etc.); and (iv) validating all taxpayer ID numbers through income tax filings, incorporation documents,

business papers and/or bank account information;

(C) Reviewing the Merchant's sales history;

(D) Listing permissible standard entry class types, if applicable;

(E) Using a unique company identifier for each Merchant or Third Party Merchant Processor and including the name of each Merchant or Third Party Processor (i.e., no acronyms, abbreviations or telephone numbers) for all transactions submitted for processing; and

(F) Outlining Merchant termination procedures.

7. The Bank shall require each Third Party Merchant Processor with which it does business by agreement to:

(A) Identify each of the Merchants for whom the Third Party Merchant Processor would be originating transactions and provide the name of the company, address, type of business, telephone numbers and principals to the Bank at least semi-annually;

(B) Identify all Secondary Merchant Processors;

(C) Perform due diligence procedures which shall generally include the underwriting standards, as described in paragraph 6, above, for each direct Merchant that the Third Party Merchant Processor processes for; except that, such Third Party Merchant Processor may substitute and/or consider additional factors to the extent that they assist the Third Party Merchant Processor in determining whether any Merchant the Third Party Merchant Processor does business with is not a Remote Seller and does not transact business on behalf of a Remote Seller.

(D) Require that each Secondary Merchant Processor that provides services for the Bank will perform the due diligence as described in paragraph 6 and supply the information as required in paragraph 7 (A) and (B) above;

(E) Require that all parties utilizing the ACH processing system be bound by the National Automated Clearing House Association (“NACHA”) rules and that all transactions will be in compliance with all state and federal laws.

(F) Cease origination services for any Merchants or Third Party Merchant Processors that violate or do not meet the due diligence procedures of the Third Party Merchant Processor;

(G) Certify in writing that their customers are not Remote Sellers and do not transact business on behalf of a Remote Seller. Such certification shall be: (i) provided to the Bank semi-annually; (ii) retained by the Bank for three (3) years, (iii) provided to any Attorney General within ten (10) business days of a written demand. A Third Party Merchant Processor’s failure to timely provide such certification raises a presumption that the Merchant is a Remote Seller or transacts business on behalf of a Remote Seller and that the Bank’s Tobacco Policy is being violated, and is grounds for immediate termination by the Bank; and

(H) Terminate Merchants and Secondary Merchant Processors that fail to:

1. Provide accurate Merchant information;
2. Notify the Third Party Merchant Processor of new Merchants, independent sales organizations or other Secondary Merchant Processors;

3. Terminate Merchants that violate the Bank's Tobacco Policy or engage in activity that violates state or federal laws;
4. Switch ACH activity to demand drafts once notified of the problem; or
5. Offer demand drafts to avoid ACH return scrutiny.

8. The Bank will perform the following verification procedures at least semi-annually:

- (A) Review Merchant listings provided by Third Party Merchant Processors;
- (B) Identify any Merchants that are Remote Sellers;
- (C) Review company names and type of business for consistency; and
- (D) Perform background checks on a random sample of at least 5% of Merchants supplied by each Third Party Processor.

9. As a result of undertaking these identification procedures, if the Bank identifies a Merchant or Third Party Processor that is operating contrary to the Bank's Tobacco Policy, the Bank shall promptly terminate that Merchant or direct the Third Party Processor to terminate the Merchant processing through the Bank. Should the Third Party Processor fail to comply with the Bank's instructions, the Bank shall terminate the Third Party Processor.

10. Within thirty (30) days of the Effective Date, the Bank shall establish standardized policies and procedures for which failure to comply will result in termination of the business relationship (e.g., providing false and/or misleading information, violating the Bank's Tobacco Policy), and shall investigate each Remote Seller identified by law enforcement authorities.

11. If the Attorneys General or any other governmental authority provides the Bank with evidence that a Remote Seller has used the Bank's services, or if the Bank becomes aware of a person violating the Bank's Tobacco Policy, the Bank shall confirm such violation within ten

(10) business days. Once the Bank confirms such violation, the Bank shall:

(A) Notify each person to the transaction in writing that the Bank does not engage in and/or facilitate the sale and/or delivery of Cigarettes or Tobacco Products;

(B) Send a copy of such correspondence to the Attorneys General identified below;

(C) Immediately and permanently terminate the Bank's relationship with each Remote Seller; and

(D) Immediately and permanently terminate the Bank's relationship with each person (e.g., Third Party Merchant Processor, Merchant, principal, etc.) who (i) used the Bank's services to engage in and/or facilitate the sale and/or delivery of Cigarettes or Tobacco Products, and (ii) fails to immediately and permanently terminate its relationship with such Internet Cigarette Retailer and/or Remote Seller.

12. The Bank designated Charles Arrindell as the Bank Officer to whom the Attorneys General or any other law enforcement or regulatory agency can provide information relating to: (i) individuals or businesses that are believed to be using or have used the Bank's services to sell Cigarettes and/or Tobacco Products; or (ii) any other information relating to this Assurance.

Access to Information

13. All communications submitted to the Attorneys General pursuant to this Assurance shall be sent to the attention of:

Laura Kaplan, Deputy Attorney General
Office of the Attorney General
Tobacco Litigation and Enforcement Section
P.O. Box 944255
Sacramento, CA 94244-2550

Christopher K. Leung, Assistant Attorney General
New York State Office of the Attorney General
Tobacco Compliance Bureau
120 Broadway, 26th Floor
New York, NY 10271
(All correspondence must reference AOD # 08-114)

Brett T. DeLange, Deputy Attorney General
Consumer Protection Division
Office of the Attorney General
Len B. Jordan Building
650 W. State St., Lower Level
P.O. Box 83720
Boise, ID 83720-0010

14. Unless otherwise provided for by this Assurance or the corresponding parties' written consent, the Bank shall provide within fifteen (15) business days of a written request by an Attorney General or other law enforcement or regulatory authority all information relating to a Remote Seller found to have used the Bank's services, as well as access to all relevant information relating to the Bank's compliance with the terms of this Assurance. The Bank shall not require the issuance of a subpoena, unless a subpoena is legally required to access Third Party information.

15. The Bank shall retain all information relating to its compliance with this Assurance for a period of not less than three (3) years.

Affidavit of Compliance

16. Within four (4) months after the Effective Date, Charles Arrindell, the designated Bank Officer shall send an affidavit to the Attorneys General verifying that the Bank is in full compliance with all of the terms of this Assurance and setting forth the details of all compliance measures undertaken by the Bank pursuant to the terms hereof, with specific reference to the sections of this Assurance. Such affidavit shall include as attachments sufficient documents

reasonably necessary for the Attorneys General to determine whether the Bank has complied with this Assurance.

Fees, Costs and Stipulated Penalties

17. In addition to agreeing to comply with all of the provisions of the Assurance described above, the Bank agrees to the following:

(A) The Bank agrees to pay, within thirty (30) days of the Effective Date, the sum of \$60,000. Of that amount, \$40,000 shall constitute civil penalties pursuant to the Unfair Competition Law (Business and Professions Code section 17206), paid to the State of California. The remaining sum of \$20,000 shall constitute reimbursement for fees or costs of investigation to the Attorneys General of California, New York and Idaho. A check in the total amount of \$60,000 shall be made payable to the California Department of Justice, and sent to the attention of Laura Kaplan, Deputy Attorney General, Department of Justice, 1300 I Street, P.O. Box 944255, Sacramento, CA 94244-2550.

(B) For any violation of this Assurance as determined by a signatory state, the Bank shall pay \$5,000 to that signatory state, within thirty (30) days of such violation, made payable to such account and address as that signatory state shall direct; provided, however, that no penalty shall be imposed if (1) the Bank establishes to the reasonable satisfaction of that signatory state that the Bank did not know and had no reason to know that its services were being used by a Remote Seller; or (2) the violation of the Assurance involves a processed transaction or sale that did not occur within, to, or from that signatory state.

Miscellaneous Provisions

18. The acceptance of this Assurance by the Attorneys General shall not be deemed or

construed as an approval by the Attorneys General of any of the activities of the Bank, its officers, directors, employees, agents, assignees and any individual, corporation, subsidiary, or division through which the Bank may now or hereafter act, or any successors in interest; and none of the parties shall make any representations to the contrary.

19. The Bank agrees not to take any action to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that the Assurance is without factual basis. Nothing in this paragraph affects the Bank's: (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorneys General are not parties.

20. This Assurance constitutes the entire agreement between the Attorneys General and the Bank pertaining to the subject matter herein, and represents a voluntary agreement and settlement of the parties' claims and defenses, entered into as a result of arm's length negotiations in which all parties hereto were represented by counsel. The agreements contained herein are made without reliance upon any inducement, statement, promise or representation, other than those expressly contained in this Assurance.

21. This Assurance shall be binding on and apply to the Bank, its officers, directors, employees, affiliates, agents, assignees and any individual, corporation, subsidiary or division through which the Bank may now or hereafter act, as well as successors in interest.

22. This Assurance may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever, except in writing duly executed by the parties or their authorized representatives.

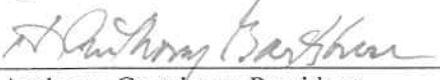
23. The individuals executing this Assurance represent that they have full and complete

authority to sign this document and to bind their respective parties to all the terms and conditions

24. The Office of the Attorney General of the State of California agrees that the Bank will not be made a party to case Number BC 392147, now pending in the Los Angeles Superior Court, nor any similar case against any one or more of the named Defendants in that case.

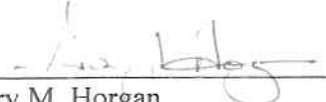
Date:

First Regional Bank

By: 
H. Anthony Gartshore, President


Date:

Horgan, Rosen Beckham & Coren, LLP

By: 
Gary M. Horgan
attorneys for First Regional Bank


Date: 9/2/08

Edmund G. Brown Jr.
Attorney General of California

By: 
Laura Kaplan, Deputy Attorney General

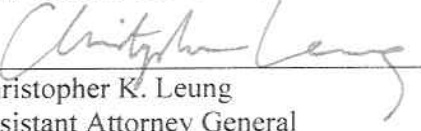
Date: 8/27/08

Lawrence G. Wasden
Attorney General of Idaho

By: 
Brett DeLange, Deputy Attorney General

Date: 8/26/08

Andrew M. Cuomo
Attorney General of New York

By: 
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Assistant Attorney General