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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,	)	
	)	No.: CV 15-00394
Plaintiff,	)	
	)	COMPLAINT FOR CIVIL
v.	)	PENALTIES, PERMANENT
	)	INJUNCTION AND OTHER
PLAZA BANK,	)	EQUITABLE RELIEF
	)	
Defendant.	)	
	)	[12 U.S.C. § 1833a, 18 U.S.C. § 1345]

1 Plaintiff, the United States of America, by its undersigned attorneys, alleges
2 as follows:

3 1. This is an action for injunctive relief and civil penalties by the
4 United States of America against Plaza Bank (“Plaza,” “the Bank,” or “Defendant”).

5 2. Shortly after its founding in 2005 to its sale in June 2009, Plaza
6 knowingly permitted fraudulent merchants, acting through an intermediary called a
7 third-party payment processor, to illegally withdraw millions of dollars from
8 consumers’ bank accounts. When Plaza’s chief compliance official raised concerns
9 about the numerous warning signs of fraud, such as a high number of returned
10 transactions, as well as complaints from consumers and other banks, she was
11 brushed aside by Plaza’s Chief Operating Officer—who, unknown to the
12 compliance officer, also happened to be a part-owner of the payment processor.
13 Plaza thus continued to give fraudsters unfettered access to the bank accounts of tens
14 of thousands of consumers.

15 3. When Plaza was purchased in 2009, its new management soon
16 realized that the Bank was allowing merchants to make unauthorized withdrawals
17 from consumers’ accounts. Rather than immediately terminate or suspend this
18 activity, Plaza officials spent months debating whether the revenues these
19 transactions were generating outweighed the possible risk to the Bank. Only after
20 hundreds of thousands of transactions were returned, more than a thousand
21 consumer victims complaints about unauthorized withdrawals reached Plaza, and
22 tens of millions of additional dollars had been withdrawn from consumer accounts
23 did Plaza finally decide to terminate the relationship.

24 **I. JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over this action pursuant to 28 U.S.C.
26 § 1331 (federal question) and 28 U.S.C. § 1345 (United States as plaintiff).

27 5. Venue is proper in the Central District of California pursuant to
28

1 28 U.S.C. § 1391(b) because defendant Plaza operates and maintains its
2 management offices and its operations center in this district, and a substantial part of
3 the events or omissions giving rise to the claims alleged in this complaint occurred in
4 this district.

5
6 **II. PARTIES**

6 6. Plaintiff is the United States of America.

7 7. Defendant Plaza is a banking corporation established in 2005
8 under the laws of California.

9 8. Plaza is a federally-insured financial institution that maintains its
10 principal executive office at 18200 Von Karman Ave, Irvine, CA 92612.

11 9. Plaza is regulated by the Federal Reserve Bank of San Francisco
12 and the Division of Financial Institutions of the California Department of Business
13 Oversight.

14 10. As of September 30, 2014, Plaza had total assets of
15 approximately \$525 million.

16
17 **III. RELEVANT STATUTES**

18 **A. The Financial Institutions Reform, Recovery, And Enforcement Act.**

19 11. The United States seeks civil money penalties from Plaza under
20 the Financial Institutions Reform, Recovery and Enforcement Act, 12 U.S.C.
21 § 1833a ("FIRREA"), which Congress enacted as part of a comprehensive
22 legislative plan to reform and strengthen the banking system and the federal deposit
23 insurance system that protects the public from bank failures. Toward that end,
24 FIRREA authorizes civil enforcement for violations of enumerated, predicate
25 federal criminal offenses, including wire fraud affecting a federally-insured
26 financial institution. Plaza's actions affected dozens of federally-insured financial
27 institutions whose customers were defrauded as a result of Plaza's actions. In
28 addition, Plaza itself was and is a federally-insured financial institution and was

1 affected by its own unlawful conduct. See, e.g., United States v. Bank of New York
 2 Mellon, 941 F. Supp. 2d 438, 461-63 (S.D.N.Y. 2013); United States v.
 3 Countrywide Fin. Corp., 961 F. Supp. 2d 598, 606 (S.D.N.Y. 2013); United States v.
 4 Wells Fargo Bank, N.A., 972 F. Supp. 2d 593, 630 (S.D.N.Y. 2013).

5 12. FIRREA's penalty provisions provide that the United States may
 6 recover civil money penalties of up to \$1.1 million per violation, or for a continuing
 7 violation, up to \$1.1 million per day or \$5.5 million, whichever is less. See 12
 8 U.S.C. §§ 1833a(b)(1), (2); 28 C.F.R. § 85.3. The statute further provides that the
 9 penalty can exceed these limits to permit the United States to recover the amount of
 10 any gain to the person committing the violation, or the amount of the loss to a person
 11 other than the violator stemming from such conduct, up to the amount of the gain or
 12 loss. See 12 U.S.C. § 1833a(b)(3).

13 **B. The Anti-Fraud Injunction Act.**

14 13. The United States seeks statutory equitable relief under Title 18,
 15 United States Code, Section 1345. Section 1345 authorizes the government to
 16 commence a civil action to enjoin enumerated, predicate federal criminal offenses,
 17 including wire fraud.

18 14. Wire fraud is committed by sending a "wire . . . in interstate or
 19 foreign commerce" for the purpose of executing, or attempting to execute, "[a]
 20 scheme or artifice to defraud, or for obtaining money or property by means of false
 21 or fraudulent pretenses, representations, or promises." 18 U.S.C. § 1343.

22 **IV. CONSUMER FRAUD IN THE 21ST CENTURY: HOW FRAUDULENT** 23 **MERCHANTS ACCESS THE ELECTRONIC BANKING SYSTEM AND STEAL** 24 **MONEY FROM UNSUSPECTING CONSUMERS**

25 **A. Federal Law Requires Banks To Know Their Customers.**

26 15. Federal law requires Plaza, like all banks in the United States, to
 27 have an effective program in place to assure that the Bank knows the identities of its
 28 customers and understands the nature of its customers' business activities, as well as

1 to prevent illegal use of the banking system by the Bank's customers. See generally
2 Bank Secrecy Act, 31 U.S.C. § 5311 et seq.; USA Patriot Act, § 326, 31 U.S.C.
3 § 5318; 31 C.F.R. § 1020 et seq. (formerly 31 C.F.R. § 103 et seq.). Such programs
4 are designed to prevent banks from providing access to the national banking system
5 to entities engaged in unlawful activity.

6 16. Because of such requirements, many fraudulent merchants have
7 difficulty obtaining bank accounts from which they can access the national banking
8 system.

9 17. During the relevant time period of its misconduct, Plaza was
10 required to conduct meaningful due diligence investigations of new clients at the
11 time of a new account opening. See 31 C.F.R. § 103.121 (amended 31 C.F.R.
12 § 1020, et seq.).

13 18. In conducting a meaningful "know-your-customer" analysis,
14 Plaza was required to collect information sufficient for the Bank to determine
15 whether a client poses a threat of criminal or other improper conduct.

16 **B. The Relationship Between Third-Party Payment Processors, Banks, And**
17 **Consumers.**

18 19. Third-party payment processors are intermediaries between
19 banks and merchants. Third-party payment processors open bank accounts in their
20 own names and use these accounts to conduct banking activities on behalf of their
21 merchant-clients. Typically, the merchant-client does not have a direct relationship
22 with the bank when a third-party payment processor is involved. Rather, the bank
23 interacts with the third-party payment processor, which in turn interacts with the
24 merchant.

25 20. Customers of third-party payment processors often are
26 legitimate businesses. In some cases, however, customers of third-party payment
27 processors are fraudulent merchants that do not or cannot open their own bank
28 accounts because banks will not do direct business with them. Thus, these

1 fraudulent merchants must rely on third-party payment processors to access the
 2 nation's banking system. At a merchant-client's direction, the processor will
 3 initiate debit transactions against consumers' accounts through its banking account
 4 and transmit the consumers' money to the fraudulent merchant.

5 21. Given the strict rules in place requiring banks to know their
 6 customers and have an effective Bank Secrecy Act/Anti-Money Laundering
 7 compliance program, bank regulators have warned banks about the risks associated
 8 with providing certain banking services to third-party payment processors (and by
 9 proxy their merchant-clients).

10 22. As early as 2008, bank regulators have urged banks to ensure
 11 that they are not abetting consumer fraud by taking particular precautions when
 12 dealing with payment processor customers. These steps have included:

- 13 a. monitoring all transaction returns (unauthorized returns and total
 14 returns);
- 15 b. reviewing the third-party payment processor's promotional materials to
 16 determine its target clientele;
- 17 c. determining whether the third-party payment processor re-sells its
 18 services to other entities;
- 19 d. reviewing the third-party payment processor's policies and procedures
 20 to determine adequacy of merchant due diligence;
- 21 e. reviewing main lines of business and return volumes for the third-party
 22 payment processor's merchants; and
- 23 f. requiring that the third-party payment processor provide the bank with
 24 information about its merchants to enable the bank to assure that the
 25 merchants are operating lawful businesses.

26 **C. Fraudulent Merchants Working With Third-Party Payment Processors**
 27 **Can Exploit Advances In Banking Technology To Harm Consumers.**

28 23. Most consumers are familiar with the typical process for paying

1 for items by check: the consumer (the “payor”) signs a check from his or her bank
2 and delivers it to the merchant (the “payee”). The merchant deposits the check in
3 the merchant’s bank, and the merchant’s bank then withdraws funds from the
4 consumer’s bank.

5 24. A demand draft (also called a Remotely Created Check or RCC)
6 is a check created not by the account holder but rather by a third party using the
7 account holder’s name and bank account information. Unlike ordinary checks,
8 demand drafts are not signed by the account holder. In place of the account
9 holder’s signature, a demand draft contains a statement claiming that the account
10 holder has authorized the check. For example, some demand drafts, including
11 those deposited at Plaza, include a legend stating “Draft Authorized For Internet
12 Purchase. Authorization On File.”¹

13 25. Banks require that, before creating and depositing a demand
14 draft, the originating merchant must have: (1) a consumer’s bank routing number;
15 (2) the consumer’s bank account number; and (3) proof that the consumer authorized
16 the transaction. The merchant or third-party payment processor then creates an
17 electronic check in the name of the consumer and deposits it in the merchant’s—or
18 payment processor’s—own bank account.

19 26. Prior to 2003, the payee was required to create a paper demand
20

21 ¹ Demand drafts are notorious in the banking industry and consumer protection
22 community for their use as instruments of fraud. In 2005, in response to a request
23 for public comment, America’s Community Bankers, a prominent industry group
24 that later merged with the American Banking Association, wrote to the Board of
25 Governors of the Federal Reserve and the FDIC that “the number of unauthorized
26 remotely-created demand drafts has become a significant problem” because of the
27 “level of fraud and abuse associated with remotely created checks.” That same
28 year, the Attorneys General of 35 states jointly urged the Federal Reserve to
eliminate such demand drafts, which are frequently “used to perpetrate fraud on
consumers.”

1 draft and physically deposit it at the payee's bank from which point it would enter
2 the national check payment system. However, in an effort to reduce the burden of
3 handling and maintaining paper copies of checks, in 2003, Congress passed The
4 Check Clearing for the 21st Century Act ("Check 21 Act"). Pursuant to this statute,
5 banks are permitted to process check transactions using electronic images of checks
6 instead of the physical original (i.e., paper check).

7 27. Because a Check 21 transaction is premised on the transmission
8 of a digital reproduction of a check, the depositor's bank can withdraw funds
9 directly from a payor's bank account as if a paper check was used via the Federal
10 Reserve Bank's check clearing system.

11 28. Due to the absence of a paper copy and the speed by which
12 digital images can be processed between banks, fraudulent merchants working with
13 third-party payment processors can exploit Check 21 Act processing to transfer
14 money from a consumer bank accounts without genuine authorization. An example
15 of a Check 21 transaction between merchant, consumer, and banks proceeds as
16 follows:

- 17 a. The merchant will obtain the consumer's bank account information,
18 including the account number and bank routing number, and generate a
19 digital image file of a demand draft. The face of the demand draft
20 purports that the draft has been created with the consumer's
21 authorization.
- 22 b. Using remote deposit capability provided by the payment processor,
23 the merchant will electronically transmit the demand draft digital
24 image to the payment processor for deposit.
- 25 c. The payment processor will send the digital image of the demand draft
26 (or just the payment information contained in the digital image) to its
27 own bank.
- 28 d. The payment processor's bank will transmit the demand draft digital

1 image via the Federal Reserve Bank's check clearing system to the
2 consumer's bank. Implicit in this transmission is the claim that the
3 payor (i.e., consumer) authorized the payment to the merchant.

4 e. The consumer's bank withdraws money from the consumer's account
5 and transmits that money through the banking system to the payment
6 processor's bank.

7 f. The payment processor's bank credits the money into the payment
8 processor's bank account.

9 g. The payment processor transmits the money from its own bank account
10 to the merchant.

11 29. During this series of transactions, the third-party payment
12 processor's bank receives fees from the third-party payment processor. The
13 third-party payment processor receives fees from the merchant. And the merchant
14 keeps whatever money remains from the amount withdrawn from the consumer's
15 account.

16 30. Demand drafts are returned through the national banking system
17 like any other checks. Some checks are immediately rejected by a consumer's bank
18 for a variety of reasons: the account does not exist, the account is closed or frozen,
19 the account owner has blocked checks to a certain payee, or there are insufficient
20 funds to cover the check (referred to as "NSF"). In most instances, these kinds of
21 returns are processed within one or two days. Other kinds of returns, including
22 "unauthorized" and "breach of warranty" returns, can be returned over longer
23 periods of time. These two categories of returns typically require the customer to
24 fill out an affidavit, signed under penalty of perjury, stating that he or she did not
25 authorize the check.

26 31. Unlike other payment systems, such as credit cards and ACH
27 transactions, demand drafts are not monitored electronically by any supervisory
28 authority. Therefore, a bank accepting large volumes of demand drafts for deposit

1 must analyze rates of returned transactions for the demand drafts it submits to the
2 nation banking system.

3 **V. FROM ITS FOUNDING, PLAZA KNOWINGLY PERMITTED FRAUDULENT**
4 **MERCHANTS TO ILLEGALLY WITHDRAW MILLIONS OF DOLLARS FROM**
5 **CONSUMERS' BANK ACCOUNTS**

6 **A. Plaza's Founding Chief Operating Officer And Its Chairman Of The**
7 **Board Each Have Deep-Seated Financial Interests In A Third-Party**
8 **Payment Processor That Would Soon Become A Vendor And Client Of**
9 **The Bank.**

10 32. Plaza was founded in 2005. Ten individual founders, each of
11 whom invested in the Bank and in return received an ownership interest, were given
12 a directorship role in the Bank. Of these ten original directors, only three had any
13 previous management experience in the banking industry. These three founders
14 assumed the Bank's main executive positions when the Bank became operational in
15 early 2006.

16 33. "Plaza COO" was hired as an Executive Vice President and the
17 Bank's Chief Operating Officer. He held a 3 percent ownership interest in the Bank
18 and was a Bank director. Prior to helping found Plaza, Plaza COO helped found a
19 third-party payment processor based in Santa Ana, California (referred to herein as
20 "TPPP-1") that would soon become a client and partner of the Bank. At TPPP-1's
21 inception, Plaza COO invested \$100,000 into the processor, which was, at the time,
22 an 11% ownership stake. Plaza COO and TPPP-1's Chief Executive Officer
23 (referred to herein as "TPPP-1 CEO") had a history of payment processing
24 partnerships dating back to at least as early as 2002.

25 34. "Plaza Chairman" owned a 1.5 percent interest in the Bank and
26 became the chairman of Plaza's board of directors. Plaza Chairman had
27 contributed \$100,000 for an 11% ownership stake in TPPP-1. He served on
28 TPPP-1's board of directors at the same time he was chairman of Plaza's board of
directors.

B. Lacking The Technical Capacity To Provide Remote Deposit Services, Plaza Outsources This Service To TPPP-1, Which Then Begins Processing Payments For Its Own Merchant-Clients For Whom Plaza Has Done No Due Diligence.

35. On or around October 30, 2006, Plaza began its formal relationship with TPPP-1 by hiring the payment processor as a vendor that would provide remote depositing services. Under the contract, TPPP-1 was required to provide Plaza's account holders with imaging software for remote depositing, maintain records of the transactions, and archive the check images. TPPP-1 was also responsible for forwarding the record of transactions and archived check images to the regional Federal Reserve Bank, a primary clearinghouse for bank-to-bank transactions and the ACH network. For these services, TPPP-1 charged Plaza and its customers a fixed rate per transaction.

36. Plaza COO and his business partner, TPPP-1 CEO, signed the agreement on behalf of the Bank and the third-party payment processor, respectively. Contrary to Plaza's Employee Handbook and its Conflict of Interest Policy, during the vendor selection process and contract negotiations, Plaza COO did not disclose his financial and ownership interest in TPPP-1 to Plaza's Bank Secrecy Act Officer (referred to herein as "Plaza Compliance Officer") or in his annual disclosure statement.²

37. On July 3, 2007, TPPP-1 opened its first deposit account at

² Plaza's written policies barred bank directors from any activity or association that might compromise or even appear to comprise the directors' judgment to the detriment of Plaza's interests. Directors were also prohibited from engaging in business dealings with the Bank that were more favorable than available to the general public or could compromise the reputation of the Bank, absent written approval from Plaza's Chief Executive Officer. Despite these policies, Plaza COO, in an e-mail sent from his Plaza e-mail address to TPPP-1 management, jokingly referred to TPPP-1 as his "master."

1 Plaza. Between July 3, 2007, and March 2010, TPPP-1 opened eighteen separate
2 bank accounts at Plaza. This dual role, as both vendor and account holder (i.e.,
3 customer), enabled TPPP-1 to process financial transactions for its own
4 merchant-clients.

5 38. At the time that TPPP-1 first opened accounts at Plaza, Plaza's
6 general fee schedule mandated that the Bank charge account holders \$10 for
7 processing returned items. A returned item is a deposit that cannot be processed by
8 the payor's bank; items may be returned for a number of reasons, such as missing
9 signatures, unavailable funds, a stop payment order, or closed accounts. Returned
10 items also include debits to consumer accounts that are reversed, including those
11 reversed because they were not authorized by the account holder.

12 39. Rather than charging TPPP-1 the \$10 fee that it advertised for all
13 of its customers, Plaza charged TPPP-1 just fifty cents (\$0.50) for each return—a
14 95% discount. By comparison, according to a 2002 report to Congress by the
15 Federal Reserve, the average deposit return fee was \$7.11 at banks. Thus, the cost
16 to TPPP-1 when it or its merchants incurred returned items—which in the coming
17 years would number in the hundreds of thousands—was not only lower than the cost
18 for Plaza's other customers, but it was likely much lower than the cost that it would
19 have incurred at other banks.

20 **C. Plaza's COO Overrides A Request To Conduct Due Diligence On**
21 **TPPP-1's Clients.**

22 40. Soon after it opened its first accounts at Plaza, TPPP-1 began
23 processing financial transactions for its own merchants-clients using remote
24 depositing. Specifically, TPPP-1's merchant-clients used electronic check items
25 created by the merchants using consumers' banking information (i.e., demand
26 drafts) to deposit funds in TPPP-1's Plaza accounts. Once the funds were
27 transferred into TPPP-1's accounts at Plaza, TPPP-1 then distributed money to each
28 of its merchant-clients by withdrawing large lump sums from its Plaza accounts on a

1 monthly basis and paying out to its clients individually based on the record of its
2 clients' balances that it maintained.

3 41. Initially, Plaza Compliance Officer was unaware that TPPP-1
4 was serving as a third-party payment processor. She believed that TPPP-1 (as a
5 Plaza vendor) was providing remote depositing services for Plaza's own customers
6 that the Bank had vetted, and that TPPP-1 (as a Plaza customer) was simply
7 depositing and withdrawing its own money. She was unaware that TPPP-1, acting
8 as a third-party payment processor, allowed its merchant-clients to use remote
9 deposits of demand drafts and other electronic checks to transfer funds from
10 consumers' accounts into TPPP-1's accounts at Plaza.

11 42. In early December 2007, Plaza Compliance Officer observed the
12 unusual nature of TPPP-1's transactions, specifically that it was making a number of
13 remote deposits and then making one large lump sum withdrawal. Once Plaza
14 Compliance Officer understood what TPPP-1 was doing, she realized that TPPP-1's
15 actions violated Plaza's Check 21 Policy, which addressed in part the Bank's
16 obligations under the Bank Secrecy Act and related regulations. Plaza's Check 21
17 Policy required Plaza to conduct a thorough background check of any merchant
18 account holder that wanted to use Check 21 services, including remote depositing,
19 so that Plaza could verify the identity, creditworthiness, and business validity of the
20 merchant. This policy also explicitly prohibited the Bank from permitting
21 third-party payment processors that held deposit accounts at Plaza from using Check
22 21 services, absent approval from senior management. Plaza's Check 21 Policy
23 noted that third-party payment processors "are inherently more risky," and that
24 merchants using third-party payment processors "have (in aggregate) displayed a
25 much higher incidence of return items and deposited items returned."

26 43. On December 18, 2007, Plaza Compliance Officer contacted
27 TPPP-1 CEO and asked about debits and credits being processed through TPPP-1's
28 accounts at Plaza. TPPP-1 CEO admitted that not only was it using remote

1 depositing without approval from Plaza, but that it was also providing these services
2 to its merchant-clients through its accounts at Plaza. Plaza Compliance Officer
3 informed TPPP-1 CEO that this was inappropriate and should stop until the
4 proper Bank clearance and vetting procedures were fulfilled. Plaza's
5 Compliance Officer requested that TPPP-1 CEO provide relevant documentation,
6 such as "[merchant] financials" and "history and structure of [the merchant]," so that
7 the Bank could "determine if [it] will agree to offer Check-21 services to your
8 [merchants]." Plaza Compliance Officer recognized that the Bank needed
9 documentation about these merchants so the Bank could fulfill its "Know Your
10 Customer" and underwriting responsibilities as outlined in its Check 21 Policy.

11 44. Before Plaza Compliance Officer could complete due diligence
12 on TPPP-1's merchants, in early 2008, Plaza COO unilaterally approved TPPP-1 to
13 continue processing financial transactions for its merchants through TPPP-1's
14 multiple accounts at the Bank using remote depositing and demand drafts. TPPP-1
15 would not have to submit any of its clients to Plaza for due diligence and bank
16 approval. Plaza COO did not document his decision-making process, and Plaza
17 Compliance Officer was not initially aware of Plaza COO's decision. In an
18 e-mail to TPPP-1 CEO, Plaza Compliance Officer noted that she had to learn from
19 another bank employee that "TPPP-1 is accepting deposits for [its merchants]"
20 and that "Plaza COO had approved it."

21 45. In addition to permitting TPPP-1 to process remotely deposited
22 demand drafts for its merchant-clients, around the same time, Plaza COO also
23 approved TPPP-1 to process ACH debits against consumers' bank accounts for its
24 merchant-clients. Without any vetting or underwriting of these merchants, Plaza
25 would serve as the Originating Depository Financial Institution for these ACH
26 transactions.

27 46. At the time that Plaza COO provided blanket approval for
28 TPPP-1 to process transactions for any of its merchants, he did not disclose to

1 Plaza Compliance Officer or disclose on his annual disclosure statement that he
2 was a shareholder in TPPP-1.

3 **D. TPPP-1's Unfettered Access To Consumer Bank Accounts Generates**
4 **Many Red Flags Of Fraud, But Plaza Chooses To Allow The Unlawful**
5 **Activity To Continue.**

6 47. Once TPPP-1 was approved to process electronic transactions
7 for merchants for whom Plaza had not conducted due diligence, TPPP-1 began
8 increasing the volume of transactions it ran through its accounts. From
9 approximately the first quarter of 2008 until February 2009, TPPP-1 processed
10 between approximately 1,000 and 22,000 items (i.e., remotely deposited checks)
11 each month for its own merchant-clients.

12 48. As TPPP-1's processing volume increased, so did the red flags
13 that many of TPPP-1's merchants were fraudulently withdrawing money from
14 consumers' bank accounts. As described more fully below, Plaza employees,
15 including Plaza Compliance Officer, observed the following indicators of fraud:

- 16 a. Of the thousands of withdrawals initiated by TPPP-1's
17 merchant-clients from consumers' accounts, Plaza knew that
18 *approximately half* were being rejected by the consumers' banks as
19 either unauthorized or fraudulent;
- 20 b. consumers complained of fraud and unauthorized debits, and other
21 banks contacted Plaza regarding unauthorized withdrawals from
22 their customers' accounts; and
- 23 c. law enforcement made inquiries to Plaza about TPPP-1, its
24 merchants, and Plaza's role in the schemes to defraud.

25 Although Plaza recognized these warning signs, it deliberately ignored them and
26 continued to permit TPPP-1 and its fraudulent merchants to access the nation's
27 banking system to siphon off consumers' monies.
28

1 **i. High Return Rates**

2 49. High rates of returned transactions—regardless of the specific
3 reason for the return—indicate potential suspicious activity, especially when
4 coupled with consumer complaints. While high return rates, in isolation, are not
5 proof of fraud, they are a red flag that a merchant’s practices may be deceptive or
6 otherwise dishonest. In addition to “unauthorized” returns, which represent an
7 explicit claim that a consumer did not authorize a debit, a high rate of “total”
8 returns also indicates potential fraud. For example, returns due to insufficient
9 funds may reflect consumers who had money taken from their accounts
10 unexpectedly or repeatedly, without authorization. Returns due to a closed
11 account may reflect consumers who were forced to close their bank accounts as a
12 consequence of unauthorized debits. As reiterated by FinCEN:

13 *Fraud:* High numbers of consumer complaints about
14 Payment Processors and/or merchant clients, and
15 **particularly high numbers of returns or chargebacks**
16 **(aggregate or otherwise), suggest that the originating**
17 **merchant may be engaged in unfair or deceptive**
18 **practices or fraud,** including using consumers’ account
19 information to create unauthorized RCCs or ACH debits.

20 FinCEN Advisory: Risk Associated with Third-Party Payment Processors,
21 FIN-2012-A010 (October 22, 2012) (emphasis added).

22 50. Plaza knew that total return rates for TPPP-1 were remarkably
23 high. Specifically, return rates between December 2007 and February 2009 for
24 all of TPPP-1’s debit transactions hovered between 50 percent and 55 percent.
25 Plaza Compliance Officer observed in a memorandum chronicling the Bank’s
26 relationship with TPPP-1 that, during this time period, Plaza had “a difficult time
27 handling the returns caused by these transactions.”

28 **ii. Complaints From Consumers And Their Banks**

 51. Further corroborating the suspicious nature of TPPP-1’s

1 transactions were the numerous credible consumer complaints about
2 unauthorized withdrawals. One Plaza employee confided in an e-mail to Plaza
3 Compliance Officer that she was aware of “hundreds of calls” complaining of
4 “fraudulent check[s]” by TPPP-1’s merchants.

5 52. Plaza’s records show that by the summer of 2008 the Bank
6 received consumer complaints regarding unauthorized withdrawals originating
7 from Plaza for TPPP-1’s merchants. For example, Plaza learned that:

8 a. On September 9, 2008, consumer R.C. complained that in August of
9 2008, a TPPP-1 merchant had withdrawn money from his account
10 using a demand draft without his “knowledge or consent.”

11 b. Also on September 9, 2008 consumer L.T. complained about the
12 same TPPP-1 merchant, which had withdrawn money from her
13 account using a “remotely created check” without her authorization.

14 These were just two of over 75 complaints for the month of September 2008
15 regarding unauthorized demand drafts by this TPPP-1 merchant. Because of
16 Plaza COO’s blanket authorization earlier in the year, Plaza had not conducted
17 due diligence or underwriting on this—or any—TPPP-1 merchant. Each month,
18 the Bank received dozens of sworn and notarized statements from consumers
19 challenging check items submitted by TPPP-1’s merchants as unauthorized and
20 fraudulent.

21 53. In addition, other banks and credit unions also alerted Plaza to
22 TPPP-1’s fraudulent merchants. For example, an official from the Corporate
23 Security Department of an Alabama-based bank called Plaza Compliance Officer
24 because it “believe[d] there are fraudulent transactions being processed through
25 [Plaza.]” The official explained that its customers were victims of a “telemarketing
26 scam” by an internet merchant and their accounts were being debited by TPPP-1
27 through Plaza. Upon receiving this information, Plaza Compliance Officer
28 attempted to vet this TPPP-1 internet merchant, but she could not find any

1 information about the company nor contact a company representative. However,
 2 Plaza did not immediately stop TPPP-1 from continuing to process transactions for
 3 this merchant.

4 **iii. Inquiries From Law Enforcement**

5 54. As explained by Plaza Compliance Officer in an e-mail to Plaza
 6 COO, in early 2009, Plaza also received “several phone calls from law enforcement
 7 wanting to subpoena records [and] stating there is fraud going on over [at Plaza]”
 8 because of TPPP-1’s transactions.

9 55. As TPPP-1 and its merchants increased their “questionable”
 10 transactions, Plaza Compliance Officer reiterated in an e-mail to Plaza COO that the
 11 Bank “receive[d] increased phone calls claiming fraud from other banks, law
 12 enforcement officers and consumers.” In 10 days’ time in early 2009, Plaza
 13 received 37 such calls.

14 **E. Even After TPPP-1 Confirms Plaza’s Knowledge That Fraudulent**
 15 **Merchants Were Initiating Unauthorized Withdrawals Through The**
 16 **Bank, Plaza Fails To Act.**

17 56. Plaza knew that TPPP-1 processed transactions not only for
 18 merchants, but also for other payment processors, who, in turn, processed for still
 19 other processors. These nested processors, in turn, processed transactions for
 20 internet-based companies that were sources of numerous consumer complaints of
 21 telemarketing fraud and unauthorized withdrawals. At times, there were at least
 22 three distinct layers of processors between the merchants withdrawing money from
 23 consumers’ accounts through Plaza and Plaza itself.

24 57. Two such internet-based merchants processing through TPPP-1
 25 and other nested processors purportedly offered identity theft protection insurance.
 26 They began processing through TPPP-1 and Plaza in February 2009, primarily using
 27 demand drafts. These demand drafts included a simple notation indicating that the
 28 withdrawal was authorized via “internet purchase.” Almost immediately, Plaza

1 began receiving complaints from consumers and their banks about fraudulent
2 withdrawals by these merchants. In addition, Plaza received more than one
3 hundred notarized consumer affidavits stating that the withdrawals by these two
4 merchants were fraudulent.

5 58. On February 27, 2009, Plaza Compliance Officer emailed
6 TPPP-1 CEO requesting information about these two internet-based merchants.
7 Plaza COO was copied on that e-mail.

8 59. Later that day, TPPP-1 CEO told Plaza that the company would
9 immediately stop processing for these identity theft protection insurance merchants.
10 TPPP-1 CEO referred to these merchants as “counterfeit” and acknowledged that
11 their remote deposits were “probably fraudulent” and “very high risk.” TPPP-1
12 CEO acknowledged that there was a “pattern” of unauthorized withdrawals by one
13 of the merchants. TPPP-1 CEO noted that one of the merchants had an
14 “unprecedented” 56 percent return rate and that he expected the return rate for the
15 merchant to increase to 70 percent. Compounding the evidence of likely fraud,
16 TPPP-1 CEO admitted that the merchant could not produce any evidence that its
17 transactions had actually been electronically authorized by consumers.

18 60. At around the same time, Plaza Compliance Officer e-mailed
19 Plaza COO, informing him about her concerns regarding TPPP-1’s activities and
20 recommending that Plaza discontinue allowing TPPP-1 to process transactions
21 through the Bank. She explained that “I am not comfortable any longer allowing
22 these types of transactions for [a nested payment processor] nor any other payment
23 processing company, especially since the balances anticipated are just not there nor
24 are we collecting sufficient fees for the head ache [sic], work, and possibly [sic]
25 reputational risk associated with servicing such transactions.” She concluded that
26 the anticipated revenue from TPPP-1’s accounts was not meeting projections and the
27 relationship was “just not worth all the trouble.”

28 61. Plaza COO ignored Plaza Compliance Officer’s concern and did

1 not respond. Plaza continued to permit TPPP-1 to process through its accounts at
2 the Bank.

3 62. Two weeks later, in early March 2009, Plaza Compliance Officer
4 again e-mailed Plaza COO to recommend that Plaza terminate TPPP-1's ability to
5 process transactions, whether on its behalf, for its merchant-clients, or for other
6 payment processors. She reiterated that her recommendation was based on
7 multiple risk factors because "[TPPP-1] is killing us over here." Plaza Compliance
8 Officer explained that for a one month period "a majority" of over 2,000
9 "Re-Presentation Check Entry" items processed by TPPP-1 would be returned.
10 Re-Presentation Check Entry items are checks reprocessed after they have already
11 been returned (typically for insufficient funds) through an ACH debit entry.

12 63. Plaza Compliance Officer confessed to Plaza COO that she was
13 "very concerned with what the regulators might think about these transactions,
14 especially since it's in our policy that Plaza Bank will not engage in [Check 21]
15 services for payment processors and their recent guidance on Remote Deposit
16 Capture."³

17 64. Yet again, Plaza COO did not act on Plaza Compliance Officer's
18 recommendation. Instead, Plaza COO verbally assured Plaza Compliance Officer
19 that he would handle the situation.

20 65. In April 2009, Plaza COO informed Plaza Compliance Officer
21 that TPPP-1 would transfer the majority of its processing activities to another bank.
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24 ³ In January 2009, the FDIC warned the banking industry about the elevated risks of
25 fraud resulting from the proliferation of remote deposits explaining that "greater
26 customer selectivity" is required because "certain aspects of fraud risk are elevated
27 in an [Remote Deposit Capture] environment." See FDIC, Risk Management of
28 Remote Deposit Capture, FDIC FIL-09-004 (January 14, 2009).

F. As Plaza Negotiates A Sale To New Owners, It Permits TPPP-1 To Increase Its Transactions Through The Bank To New Highs.

66. Plaza had operated at a loss since its inception and as a result was undercapitalized. In danger of being closed by regulators for “unsafe or unsound banking practices,” Plaza entered into negotiations to be sold to a private equity firm (“Purchaser”). On or around October 13, 2008, Purchaser entered into a preliminary Stock Purchase Agreement to gain a controlling interest in Plaza. As a condition of receiving regulatory approval for their purchase, Purchaser was required to install new directors and hire new management to run the Bank. Plaza and Purchaser anticipated that the sale would be finalized and regulatory approval received by June 2009.⁴

67. With the impending sale and change in management, TPPP-1 realized its window to the nation’s banking system could close when Plaza’s new management learned of the suspicious nature of its merchants’ transactions. Thus, despite having informed Plaza just two months earlier in April 2009 that it would move its processing activities to another bank, TPPP-1 increased the volume of processing for its merchant-clients while new management began the process of officially taking over bank operations. Specifically, TPPP-1 increased the number of processed items from approximately 900 items in May 2009 to more than 6,500 in June 2009 and more than 124,000 by July 2009, which was nearly six times higher than TPPP-1’s previous high for monthly transaction volume. In his notes, Plaza’s Chief Financial Officer observed that after May 2009, “[r]eturn items associated with [TPPP-1] accounts spiked.”

⁴ During the course of Purchaser’s due diligence, Plaza’s board of directors disclosed in its December 2008 Offering Circular that Plaza COO was a founder of TPPP-1. This information did not dissuade Purchaser from proceeding with the acquisition.

68. On June 1, 2009, Purchaser received regulatory approval for its investment into and takeover of Plaza. Concurrently, Purchaser announced the addition of three new members to Plaza's Board of Directors and the hiring of new bank executives, including a new bank president and chief executive officer.

69. On or around June 8, 2009, Plaza and Plaza COO entered into a separation agreement. Plaza Chairman signed the contract on behalf of Plaza. Pursuant to the agreement, Plaza COO would serve as a "Transition Officer" until August 5, 2009, and assist with the management changeover.

VI. WHILE PLAZA'S NEW MANAGEMENT WEIGHED REVENUE AGAINST RISK, THE BANK CONTINUED TO KNOWINGLY FACILITATE FRAUD AND THEFT FROM CONSUMERS

A. Plaza's New Management Immediately Learns That TPPP-1 Is Processing Payments For Fraudulent Merchants.

70. Within a month of taking over bank operations, the new leadership team became aware of the dubious nature of the transactions TPPP-1 processed through Plaza's accounts. In July 2009, an investigator with Bank of America contacted Plaza's new president (hereinafter referred to as "Plaza President") and Plaza Compliance Officer about atypically high return rates for transactions originating from Plaza by one of TPPP-1's main merchant-clients, Mike Moneymaker. Moneymaker operated a number of companies that purportedly offered products such as free VISA cards, free voice mail, free airline tickets, and other products to the public.⁵

⁵ In reality, these companies fraudulently obtained consumers' banking information and illegally withdrew money from their accounts on a recurring basis, typically using demand drafts. Eventually, a federal court enjoined Moneymaker from his deceptive business practices and ordered him to pay a civil penalty of more than \$9 million. See FTC v. Michael Bruce Moneymaker, No. 11-cv-00461 (D. Nev. Feb. 1, 2012).

1 71. In response to the investigator's inquiry, Plaza President asked
2 the Bank's employees for further information about both TPPP-1 and Moneymaker.
3 He learned that Plaza had little to no information about TPPP-1's merchant-clients,
4 and that those clients used TPPP-1's accounts at Plaza to withdraw money from
5 consumers using what one Plaza employee described as "draft check garbage."
6 Plaza President also learned that TPPP-1's transactions had troublingly high rates of
7 returns. For example, in July 2009 alone, Moneymaker's companies that processed
8 through Plaza had a return rate of 68 percent.

9 72. At the same time, however, Plaza President was informed that
10 the Bank was "enjoying quite a bit of fee income from the returns." In July 2009,
11 Plaza anticipated approximately \$78,000 in Return Item Fees from TPPP-1. While
12 noting that the income from the return fees was "nice," Plaza's President maintained
13 that he wanted more information about Moneymaker and the reasons for the high
14 return rates of his companies.

15 73. In response to the inquiry by Plaza, in August 2009, TPPP-1
16 CEO informed the Bank that it would terminate processing for one specific
17 Moneymaker company, Belfort Capital Ventures, because of unacceptably high rate
18 of consumer debits returned as unauthorized. This did not deter Moneymaker; he
19 simply stopped using the name Belfort Capital Ventures to illegally debit
20 consumers' accounts and began submitting withdrawals under the name of another
21 one of his companies that was not yet on Plaza's radar as a front for fraud, Freedom
22 Subscription.

23 74. Between July 2009 and December 2009, TPPP-1 processed
24 nearly 300,000 additional transactions totaling approximately \$16.3 million dollars
25 for Moneymaker and his companies.

26 75. Moneymaker's problematic financial transactions were not the
27 only warning signs Plaza's new management received about TPPP-1's clients
28 during this period. Also in August 2009, one of the nested payment processors that

1 used TPPP-1's Plaza accounts e-mailed TPPP-1 CEO, copying Plaza President,
2 about a dispute regarding monies that TPPP-1 was withholding. In its e-mail, the
3 nested processor admitted that one of its merchants was "guilty of submitting
4 fraudulent transactions."

5 76. On or around August 24, 2009, Plaza President specifically
6 learned of Plaza COO and Plaza Chairman's involvement with TPPP-1, and
7 disclosed this information to one of the new board members brought in by
8 Purchaser.

9 77. Despite learning this information that tainted the Bank's
10 previous decisions regarding TPPP-1, Plaza did not terminate, or even suspend,
11 TPPP-1's processing capability. In light of the red flags observed by Plaza's new
12 management, on August 19, 2009, Plaza's Risk Management Committee
13 commissioned its new Chief Banking Officer (hereinafter referred to as "Plaza
14 CBO") to investigate TPPP-1 in greater detail. Plaza CBO planned on engaging an
15 independent auditor to evaluate the TPPP-1 relationship so that the Bank could
16 weigh the potential revenue against any potential risk. As memorialized in its
17 meeting notes, the Risk Management Committee was concerned that "the Bank
18 could be liable for the loss" resulting from the "fraud on [a consumer's account],"
19 but there was no mention of the harm to consumers whose money was stolen.

20 78. In September 2009, Plaza began identifying TPPP-1's largest
21 merchants by transaction volume and dollar amount and, during this process, learned
22 that they all had "large volume[s] of returns" and associated consumer complaints
23 confirming fraud.

24 79. While the Bank continued its evaluation, TPPP-1 continued
25 processing unauthorized withdrawals from consumers' accounts through Plaza.
26 The inevitable returns associated with these unauthorized withdrawals were a
27 substantial revenue generator for the Bank. For example, in September 2009,
28 TPPP-1 generated over 160,000 returned items; even with a severely reduced rate of

1 \$0.50 per return item, Plaza was due to collect over \$83,000 in fee income.

2 80. On October 15, 2009, Plaza CBO visited TPPP-1's operations in
3 Santa Ana, California. He met with (now former) Plaza COO in his role as a
4 consultant for TPPP-1. In reporting on this meeting to the remaining executive
5 team, Plaza CBO reiterated that TPPP-1 did not, in fact, vet its merchants. He
6 observed that Moneymaker and his companies were the subject of separate lawsuits
7 by the State Attorneys General of Arkansas, Kentucky, and Indiana for a fraudulent
8 billing scheme that prominently used telemarketing call centers. TPPP-1 was
9 aware of these lawsuits, but had still permitted Moneymaker to process through its
10 accounts at Plaza. Plaza CBO also acknowledged that TPPP-1 processed for
11 merchants that were "three or four levels removed" from the Bank.

12 81. While this was happening, consumers continued to call Plaza
13 President, Plaza's new CEO, and Plaza Compliance Officer about unauthorized
14 withdrawals originating from Plaza. Meeting Minutes from Plaza's Board of
15 Directors where it "discussed the [TPPP-1] relationship at length," noted that
16 approximately 90 percent of all the calls that Plaza received were "irate customer
17 complaints" about illegal debits from their bank accounts by TPPP-1's merchants.

18 82. Consumers also e-mailed Plaza's new management about
19 illegal withdrawals by TPPP-1's fraudulent merchants. For example:

- 20 a. Consumer J.C. wrote to Plaza in September 2009 about an internet
21 merchant that twice withdrew money from his account through
22 TPPP-1's account: "I want to know who the [expletive] this is
23 PLEASE, ASAP, they are taking out this money out of my
[expletive] checking account illegally."
24 b. Consumer J.B. wrote to Plaza in November 2009 that an internet
25 merchant "is withdrawing monies from my account" and that her
26 attempts to contact the company were "unsuccessful[]." She noted
27 that she had first contacted another Plaza Bank, which told her that it
28 was "getting many complaints about this."

B. Plaza's New Management Finally Decides The Risks Outweigh The Rewards.

83. By the fourth quarter of 2009, Plaza's new management concluded that the profits it was earning from TPPP-1's business no longer justified the risk. On November 19, 2009, Plaza's management reported to the Bank's Board of Directors that, despite the "reasonable fee income," it had decided to slowly wind down the TPPP-1 relationship.

84. When announced, the decision upset Plaza Chairman—TPPP-1's main Plaza insider following Plaza COO's departure—who was unaware that bank executives were even considering closing TPPP-1's accounts. The next day, Plaza Chairman e-mailed TPPP-1 CEO "to apologize" for the "embarrass[ment]" of not being able to keep open TPPP-1's access to the nation's banking system. On December 2, 2009, Plaza Chairman tendered his resignation from Plaza's Board of Directors stating that he felt "an estrangement from some of the recent developments at Plaza Bank."

85. Although it decided to close TPPP-1's accounts, Plaza did not immediately terminate TPPP-1's ability to process through the Bank.

86. Plaza CBO and TPPP-1 CEO, among others, collaborated on a plan whereby TPPP-1 would start moving the "higher risk stuff" to another bank, First Bank of Delaware.⁶

⁶ On November 19, 2012, the U.S. Attorney's Office for the Eastern District of Pennsylvania filed suit against First Bank of Delaware in an action captioned United States v. First Bank of Delaware, Civil Action No. 12-CV-6500 (E.D. Pa.). The government alleged that First Bank of Delaware engaged in a scheme to defraud consumers by originating electronic-payment transactions knowing that the authorizations for these transactions had not been obtained, or had been obtained using trickery and deceit. The case was resolved with the bank paying a \$15 million fine and surrendering its charter. The case implicated some of the same fraudulent merchants that processed payments through TPPP-1 and Plaza.

1 87. Initially, TPPP-1 assured Plaza that it would step-down the
2 volume of transactions over the course of three months, and that processing volume
3 would stop by March 1, 2010. In November 2009, TPPP-1 processed
4 approximately 376,000 items through Plaza, and told Plaza that it planned on
5 decreasing that volume to: 185,000 in December, 118,000 in January, and 60,000
6 in February.

7 88. TPPP-1's processing volume did not step down as it had
8 promised. In fact, transaction volumes were substantially higher than previously
9 claimed by TPPP-1: 214,000 in December, 190,000 in January, and 143,000 in
10 February.

11 89. During this period, return rates for TPPP-1's transactions
12 remained as high as 50 percent. In November 2009, Plaza received over 375,000
13 returned items in connection with TPPP-1's prior transactions. Plaza was in line to
14 collect over \$180,000 for processing these returned items.

15 90. Plaza's delay in terminating TPPP-1's processing activity
16 substantially harmed consumers. For example, as noted above, Plaza had
17 previously requested that TPPP-1 stop processing for Moneymaker and his
18 company, Belfort Capital Ventures. In January 2010, Plaza reiterated its request to
19 TPPP-1 CEO that the processor refuse all transactions initiated by Moneymaker and
20 any of his companies. TPPP-1 assured Plaza that it would comply with this request.
21 However, Plaza did not monitor or halt these transactions. In fact, TPPP-1
22 processed thousands of additional fraudulent demand drafts for Moneymaker,
23 contrary to TPPP-1's prior assurances, through April 2010.

24 91. The harm caused by Plaza's delay is further highlighted by
25 consumers' continued complaints to Plaza during this time period. For example, in
26 January 2010:

- 27 a. Consumer E.M. wrote Plaza's president and Plaza Compliance
28 Officer about a fraudulent demand draft that identified Plaza as the

1 originating bank for the illegal withdrawal: “WE ARE SO UPSET,
2 NOT ONLY ARE WE IN THE MIDDLE OF A BANKRUPTCY
3 BUT THESE FUNDS ARE TO BE USED IN A PAYMENT TO BE
4 SENT IN 2 DAYS. I AM DEMANDING THAT THIS CHARGE
5 BE REVERSED IMMEDIATELY.” (capitalization in original
6 e-mail)

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- b. Consumer R.W. wrote to Plaza’s president and Plaza Compliance Officer about a TPPP-1 merchant: “This company fraudulently withdrew \$69.95 from my checking account without my authorization and they utilized your bank to do it. . . . This company not only took advantage of me, but of at least ten other unsuspecting victims, who I located on a complaints message board. I want your bank to be aware that I have reported this company to the FBI-Internet scams department, the Better Business Bureau in Las Vegas, my local police department and my bank. Please be aware that I will also be contacting my local media and the name of your bank may be included, since these people are using it to conduct fraudulent activity.”
 - c. Consumer J.T. wrote to Plaza’s president about the TPPP-1 merchant that was the subject of Consumer R.W.’s complaint: “One of your customers . . . is in the business of using information from online payday loan applications to write unauthorized checks on their checking accts. I have filed a complaint with the ic3 [sic] website and the ftc [sic] about this unauthorized check and know by reading other reports that more complaints are being filed. If there are any more checks written on my accounts from your bank I will have to assume you are in on the scheme and will report you to the proper authorities.”
 - d. Consumer E.S. wrote to Plaza’s president about another TPPP-1 merchant: “I would like to inform you of a problem I am having with one of your check processing customers. . . . My complaint is hardly unique, a Google search . . . will turn up hundreds of similar complaints with not a single positive response from anyone online for this company. The company is creating websites as a ruse to take consumers bank account information and then charge their accounts for valueless website subscription services. . . . I have notified the police . . . the FBI, the FTC, my state’s Attorney General, the internet hosting company, several news organizations, my bank and your [] subsidiary [TPPP-1] of what is going on. . . . I realize that my one

1 complaint is not enough, but again a simple web search should
2 provide plenty of evidence supporting my position.”

3 92. Consumer complaints about TPPP-1’s transactions became so
4 voluminous that Plaza developed a response template to respond to aggrieved
5 consumers. In this stock response, Plaza admitted:

6 The unauthorized withdrawal from your account is of
7 great concern to us at Plaza Bank. Many of us can
8 empathize with your situation, having had similar
9 experiences personally; we regret the inconvenience
caused you and want to help resolve the problem
expeditiously.

10 **Our customer, [TPPP-1], processes transactions for**
11 **third parties and unknown sources, periodically**
12 **submitting questionable items through their system.**

13 Due to these problem transactions we are in the process of
14 discontinuing accepting items from [TPPP-1]. (emphasis
added)

15 93. On February 16, 2010, Plaza Chairman wrote to Plaza’s Board of
16 Directors on behalf of TPPP-1 requesting “a favor” to extend the winding down
17 deadline of March 1, 2010.

18 94. On February 18, 2010, the board approved an extension of the
19 winding down deadline to May 1, 2010, provided TPPP-1 guaranteed sufficient
20 funds to cover the expected returns.

21 95. From January 2010 to May 2010, Plaza received approximately
22 260,000 returned items on average per month, which should have resulted in
23 \$130,000.00 in fees from TPPP-1 to Plaza per month.

24 96. During the five-month period after the Bank finally decided to
25 terminate its relationship with TPPP-1, Plaza permitted the processor to withdraw an
26 additional \$55 million from consumers’ accounts.
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COUNT I

(18 U.S.C. § 1345 – Injunctive Relief)

97. The United States incorporates by reference paragraphs 1 through 96 as if fully set forth in this paragraph.

98. Plaza violated the wire fraud statute, 18 U.S.C. § 1343, by participating in a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses with the intent to defraud, using wire communication and there is a substantial likelihood of future violations.

99. Plaza's conduct constitutes or is likely to constitute a continuing and substantial injury to the United States and its citizens. Absent injunctive relief, Plaza's conduct presents a reasonable likelihood or a cognizable danger of recurrence.

100. The United States seeks, pursuant to 18 U.S.C. § 1345(b), a permanent injunction restraining all future fraudulent conduct and any other action that the Court deems just in order to prevent a continuing and substantial injury to the persons and entities affected by the Defendant's fraudulent scheme.

COUNT II

(12 U.S.C. § 1833a – Civil Penalties)

101. The United States incorporates by reference paragraphs 1 through 96 as if fully set forth in this paragraph.

102. Plaza violated the wire fraud statute, 18 U.S.C. §1343, by participating in a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses with the intent to defraud, using wire communication.

103. This wire fraud scheme affected numerous federally-insured financial institutions, including the banks of the consumer victims from whom money was taken without authorization, and Plaza itself.

104. Accordingly, Plaza is liable to the United States for civil

1 penalties as authorized under 12 U.S.C. § 1833a(b).

2 ///

1 WHEREFORE, the United States requests judgment against Defendant, as follows:

- 2 a. An injunction under 18 U.S.C. § 1345 enjoining Defendant from
3 processing financial transactions for third-party payment processors it
4 knows or should know is facilitating consumer fraud;
5 b. A judgment imposing a civil penalty against Defendant up to the
6 maximum amount allowed by law; and

7 ///

1 c. Such further relief, including but not limited to equitable relief under
2 the Court's inherent powers, as the Court deems just.

3
4 DATED: March 12, 2015

Respectfully,

5 BENJAMIN C. MIZER
6 Acting Assistant Attorney General
7 JONATHAN F. OLIN
8 Deputy Assistant Attorney General
9 Civil Division

10 MICHAEL S. BLUME
11 Director
12 RICHARD GOLDBERG
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17 STEPHANIE K. YONEKURA
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21 Chief, Civil Division

//s// Anoiel Khorshid

21 ANOIEL KHORSHID
22 Assistant United States Attorney

23 Attorneys for Plaintiff United States of
24 America

DEMAND FOR JURY TRIAL

Plaintiff United States of America hereby demands a trial by jury.

DATED: March 12, 2015

Respectfully,

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Acting Assistant Attorney General
JONATHAN F. OLIN
Deputy Assistant Attorney General
Civil Division

MICHAEL S. BLUME
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