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March 19, 2025

VIA EMAIL ONLY

Mr. Frank Gomez, Deputy Treasurer-Tax Collector
County of Fresno
Hall of Records, Room 105
2281 Tulare Street
Fresno, California 93721

**Re: Fresno Unified School District
First Community Credit Union/Check Fraud – Retained Funds – District
Informational Directive**

Dear Mr. Gomez:

In our capacity as general counsel to the Fresno Unified School District (“District”) we write to address the on-going issue involving retained funds from fraudulently obtained vendor payment checks issued on behalf of the District to one of its contractors, Davis Moreno Construction, Inc. (“Davis”). This letter is provided at the direction of the District.

Background

Recognizing that this letter is expected to be provided to other parties, we are providing certain background information to place this letter, and its directives, in context.

The District is a public school district organized and operating pursuant to the laws of the State of California (“State”) and is a governmental agency. The District’s funds and accounts are, pursuant to State law, generally held by the County of Fresno (“County”). This includes, but is not limited to, funds held for the completion of authorized school construction projects under the District’s general obligation bond authorization. The County of Fresno uses BMO Bank, N.A. (“BMO”) to administer District funds.

In or about February 2024, an unknown individual, posing as a representative of Davis, fraudulently submitted a change of mailing address for Davis. When the District issued payments (through the County and its agent BMO) on a District construction project, for which Davis was the general contractor, the checks were sent to the address that was set out in the fraudulent address change.

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Two checks in question were issued by the County, on behalf of the District, and were subsequently presented for deposit at the First Community Credit Union (“Credit Union”) in North Dakota. The first check, in the amount of \$1,265,762.69, was deposited into a Credit Union account on February 6, 2024 (Check No. 530557082) (hereinafter, “First Check”). Based on information from the Credit Union, withdrawals were made by the account holder on February 20, 2024, in the amount of \$725,048.28, and on February 21, 2024, in the amount of \$533,220.01. This leaves a balance of \$7,494.40 of the original deposit amount, based on the original deposit amount from the First Check, remaining in such account.

A second check in the amount of \$1,064,990.73 was presented for deposit to the Credit Union on February 22, 2024 (Check No. 530559454) (hereinafter, “Second Check”). It appears that no withdrawals have been made to date against this deposit and, according to the Credit Union (as of October 23, 2024), it is holding the amount of \$1,060,887.49 (which is \$4,103.24 less than the original deposit). We and the District are unaware of any explanation for the discrepancy in such amounts concerning the Second Check and the account held by the Credit Union.

According to a letter dated April 22, 2024, from Mr. Gregory W. Tschider, Jr., attorney for the Credit Union, BMO submitted to the Credit Union a Breach of Warranty Claim (BMO Ref#265959), which we understand was received by the Credit Union on or about April 4, 2024. That Breach of Warranty Claim pertained to the Second Check and information was included with that correspondence which demonstrated that the Second Check was issued as payment to Davis by the District.

Further, BMO issued a Breach of Warranty Claim (BMO Ref#265952) pertaining to the First Check on September 16, 2024, which, again, included information which demonstrated that the First Check was issued as payment to Davis by the Fresno Unified School District.

If additional information is required by the Credit Union to verify that the checks, and funds held, are the property of the District, we will promptly provide it to the Credit Union.

It is our understanding that the Credit Union, in response to the demands for return of the funds referenced above, has offered to release such District funds that it currently holds “...upon the release of the Credit Union by BMO and the [School] District on both of the checks.” (per letter dated October 23, 2024, from Credit Union attorney Mr. Gregory W. Tschider, Jr. to BMO officials). No legal basis or justification was, to our knowledge, provided for this demand of liability release by the Credit Union. There also was, to our understanding, no reference to any interest earnings on the retained funds, notwithstanding that the Credit Union has held such funds for more than a calendar year.

Needless to say, these circumstances raise serious concerns for the District, especially concerning the funds the Credit Union is currently holding and appears unwilling to return to the District without such a release.

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Directives

It is the position of our client that it is incumbent upon the Credit Union to promptly communicate to all involved parties the specific legal and/or factual grounds for its continuing to hold the District's funds.

It is also incumbent upon the Credit Union to provide to all involved parties, again without delay, an accounting of the Credit Union's handling of both checks, funds and account(s): that is, the deposits, withdrawals, all interest earned on the retained funds, and any other account activities related to the two checks, funds and accounts discussed herein.

Please provide a response to these directives by March 31, 2025.

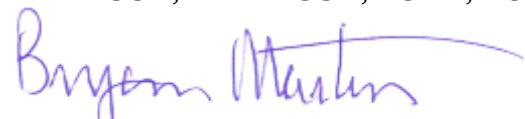
Conclusion

On behalf of the District, we are routing this letter through the County based on the County's administration of District funds and involvement in attempting to resolve these circumstances. Therefore, again - on behalf of the District, it is requested that the County communicate this demand (and a copy of this letter) immediately so that it reaches the Credit Union as soon as possible for reply and action.

Thank you for your assistance. Please contact the undersigned if you have any questions.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Bryan G. Martin

BGM:sah

cc: Patrick Jensen, Chief Financial Officer
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