

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

IN THE MATTER OF:

**Artichoke Joe’s, a California Corporation
d/b/a Artichoke Joe’s Casino
San Bruno, California**

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Number 2018-02¹

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Financial Crimes Enforcement Network (FinCEN) has determined that grounds exist to assess a civil money penalty against Artichoke Joe’s, a California corporation d/b/a Artichoke Joe’s Casino (AJC), pursuant to the Bank Secrecy Act (BSA) and regulations issued pursuant to that Act.²

AJC admits to the facts set forth below and that its conduct violated the BSA. AJC consents to the assessment of a civil money penalty and enters into the CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (CONSENT) with FinCEN. The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (ASSESSMENT) by reference.

FinCEN has the authority to investigate and impose civil money penalties on card clubs for violations of the BSA.³ Rules implementing the BSA state that “[o]verall authority for enforcement

¹ The Assessment of Civil Money Penalty (2017-005), dated November 15, 2017, in which FinCEN imposed on Artichoke Joe’s Casino a civil money penalty of \$8,000,000 is rescinded. All references in this CONSENT to the “ASSESSMENT OF CIVIL MONEY PENALTY” or “ASSESSMENT” are references to the order issued on May 3, 2018.

² The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

³ 31 C.F.R. § 1010.810(a); Treasury Order 180-01 (July 1, 2014).

and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter” has been delegated by the Secretary of the Treasury to FinCEN.⁴

AJC is a card club located in San Bruno, California and has been in operation since 1916. It contains 38 tables offering card and tile games, including baccarat, blackjack, poker, and Pai Gow. AJC was a “financial institution” and a “card club” within the meaning of the BSA and its implementing regulations during the time relevant to this action.⁵ The Internal Revenue Service (IRS) examines card clubs for compliance with the BSA under authority delegated by FinCEN.⁶ IRS conducted an examination of AJC in 2015 that identified significant violations of the BSA.

On May 9, 2011, AJC entered into a stipulated settlement with the California Bureau of Gambling Control. AJC agreed to pay a fine of \$550,000, with \$275,000 stayed for a two-year period, and agreed to modify its surveillance, work with the city of San Bruno to improve coordination with law enforcement, replace employees at the Pai Gow tables, and provide additional training on loan-sharking, illegal drugs, and compliance with the BSA.⁷

II. DETERMINATIONS

FinCEN has determined that AJC willfully violated the BSA’s program and reporting requirements from October 19, 2009 through November 15, 2017.⁸ As described below, AJC: (a)

⁴ 31 C.F.R. § 1010.810(a).

⁵ 31 U.S.C. § 5312(a)(2)(X); 31 C.F.R. § 1010.100(t)(6).

⁶ 31 C.F.R. § 1010.810(b)(8).

⁷ *In the Matter of the Accusation Against: Artichoke Joe’s, a California corporation dba Artichoke Joe’s Casino*, California Gambling Control Commission Case No. 2011 03-04-2 (May 9, 2011).

⁸ In civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that

failed to implement and maintain an effective anti-money laundering program;⁹ and (b) failed to detect and adequately report suspicious transactions in a timely manner.¹⁰

A. Violations of the Requirement to Establish and Implement an Effective Anti-Money Laundering Program

The BSA and its implementing regulations require card clubs to develop and implement written anti-money laundering (AML) programs reasonably designed to assure and monitor compliance with the BSA.¹¹ AJC was required to implement an AML program that, at a minimum, provided for: (a) a system of internal controls to assure ongoing compliance; (b) independent testing of the card club’s AML program by card club personnel or parties external to the card club; (c) training of personnel; (d) the designation of an individual or individuals responsible for assuring day-to-day compliance; (e) procedures for using all available information to determine and verify name, address, social security or taxpayer identification number, and other identifying information for a person, to the extent determining and verifying the information is otherwise required under the BSA; (f) procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious; (g) procedures for using all available information to determine whether any records must be made and maintained pursuant to the BSA; and (h) for card clubs with automated data processing systems, use of such systems to aid in assuring compliance.¹²

the conduct violated the Bank Secrecy Act, or that the entity or individual otherwise acted with an improper motive or bad purpose. AJC admits to “willfulness” only as the term is used in civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1).

⁹ 31 U.S.C. §§ 5318(a)(2), 5318(h); 31 C.F.R. § 1021.210.

¹⁰ 31 U.S.C. § 5318(g); 31 C.F.R. § 1021.320.

¹¹ 31 U.S.C. §§ 5318(a)(2), 5318(h); 31 C.F.R. § 1021.210(b)(1).

¹² 31 C.F.R. § 1021.210(b)(2).

1. Internal Controls

AJC failed to implement an adequate system of internal controls to assure ongoing compliance with the BSA. AJC's failure to implement adequate internal controls exposed the card club to a heightened risk of money laundering and criminal activity. Indeed, a federal criminal investigation led to the 2011 racketeering indictment and conviction of two AJC customers and others for loan-sharking and other illicit activities conducted at AJC with the direct assistance of the card club's employees.¹³ Loan-sharks, who extended extortionate and unlawful credit to patrons of AJC, openly used AJC to facilitate their activities by conducting illicit transactions within the card club, using the card club's gaming chips and U.S. currency. Some AJC employees knew that the transactions involved loan-sharking funds and, in some instances, acted to facilitate the transactions.¹⁴ AJC failed to implement adequate policies and procedures to identify and report the criminal activity that took place inside the card club.

Deficiencies in AJC's internal controls persisted over an extended period of time. For example, through 2013, the program AJC instituted was incomplete and contained numerous gaps. The 2012 AML program's section on the negotiable instruments log consisted solely of a highlighted phrase, "Describe Card Club procedures." Other sections of the AML program were blank, omitted, or contained placeholders such as "Insert explanation of how we intend to accomplish," "Insert Description of Systems in Place," and "find actual wording."

Other internal controls deficiencies persisted beyond 2012. AJC continued to lack adequate policies and procedures to determine when a customer should receive additional scrutiny after the

¹³ J. in a Criminal Case, *United States v. Cuong Mach Binh Tieu, et al.*, No. CR-11-00097 (N.D. CA. July 5, 2012), ECF No. 263, ECF No. 554.

¹⁴ *Id.*

filing of a Suspicious Activity Report (SAR). When it filed multiple SARs on a customer, AJC often failed to adequately monitor and review subsequent customer activity. For example, in 2016, AJC subjected the card club to a high risk of money laundering when it failed to monitor one customer, on whom it filed nine SARs for suspicious source of funds between 2012 and 2015. Despite the fact that the customer engaged in over \$1.8 million of cash-in transactions from June 2016 through September 2016, AJC did not adequately monitor that customer's transactions to determine if it should file a SAR.

AJC did not implement adequate procedures to ensure that it filed complete and accurate BSA reports. Further, although AJC filed multiple SARs that describe activity where customers used agents to cash in more than \$10,000, AJC did not file corresponding currency transaction reports (CTRs). Even on transactions where this activity was reported in both CTRs and SARs, AJC failed to correctly report activity of agents making cash in transactions on behalf of customers. In January 2017, for example, a SAR was filed on an individual for suspiciously conducting transactions on behalf of a customer. However, the three corresponding CTRs for this transaction failed to identify the customer for whom the transaction was conducted.

Backline Betting, Kum Kum Betting, and Kum Kum Banking

Despite offering backline betting, Kum Kum betting, and Kum Kum banking, AJC did not have internal controls in place to mitigate the risks associated with these activities.¹⁵ Only one acknowledgement of "backline betting" was contained in AJC's written compliance program, which stated only that the practice takes place. The program failed to address risks presented by

¹⁵ Kum Kum betting allows customers to move, add, subtract or pool their wagers around a table or at different player positions to form one wager. Generally, the individual with the highest wager is the only one to see the cards dealt. Kum Kum banking is the practice of players pooling their funds to form one bank, which is used to bet against the other players at a table game.

practices that could allow customers to pool or co-mingle their bets with relative anonymity. In fact, AJC contended that “players at card rooms have the right to play anonymously.” Accordingly, AJC had no procedures in place to identify individuals participating in backline betting, Kum Kum betting, or Kum Kum banking, nor did it have procedures for the collection of customer information in situations where conduct by the individuals could be indicative of suspicious activity. The failure to incorporate these practices into its policies and procedures detrimentally impacted AJC’s ability to collect information on customers’ identities, which was required to meet its BSA reporting obligations. FinCEN has stated repeatedly that card clubs must have procedures for ensuring the identification of individuals involved in backline betting, Kum Kum betting, or Kum Kum banking.¹⁶

2. Procedures for Using All Available Information

The regulations covering card clubs require the institution to use all available information to identify and verify customer information including name, permanent address, and social security number and to determine occurrences of transactions or patterns of transactions that warrant the filing of a SAR.¹⁷

FinCEN has made it clear that propositional players must be incorporated into programs for ensuring compliance with the BSA.¹⁸ The BSA requires card clubs to monitor and file reports on

¹⁶ FIN-2007-G005, Frequently Asked Questions: Casino Recordkeeping, Reporting, and Compliance Program Requirements (Nov. 14, 2007); FIN-2012-G004, Frequently Asked Questions: Casino Recordkeeping, Reporting, and Compliance Program Requirements (Aug. 13, 2012).

¹⁷ 31 C.F.R. § 1021.210(b)(2)(v).

¹⁸ FIN-2007-G005, Frequently Asked Questions: Casino Recordkeeping, Reporting, and Compliance Program Requirements at 7-8 (Nov. 14, 2007). A propositional player is paid by a casino or card club to wager at a game. The propositional player wagers with his or her personal funds and retains any winnings and absorbs any losses. A propositional player's function is to start a game, to keep a sufficient number of players in a game, or to keep the action going in a game. The propositional player may be an employee of the casino or card club, or the casino or card club may enter into a contractual arrangement with a "third party provider of propositional player services.”

suspicious activity that it knows or reasonably should know occurred by, at, or through the card club. AJC did not establish procedures for obtaining and utilizing information from propositional players who may have observed suspicious transactions. Despite its use of propositional players to wager at the card club, AJC did not mention propositional players in its AML program. In a 2011 interview with law enforcement, a third party propositional player contracted by AJC provided information identifying a customer lending money to other customers at the Pai Gow area — no policies and procedures were in place to use this information to determine whether or not a SAR should have been filed.

AJC failed to implement adequate procedures to ensure that it used available information to file complete SARs that fully described the extent of suspicious activity when it was in fact identified. Of the twelve SARs that AJC filed from 2010 to 2011, all contained inadequate narratives. The narratives, consisting solely of one to three sentence statements, failed to include information on the transactions in question that was essential to ensuring that the reports would prove useful to law enforcement. In 2015, AJC installed a full-time compliance officer and the volume of AJC's SAR filings and details provided in the SAR narratives have increased. In addition, as of 2011, AJC updated its ability to identify, detect, and report suspicious activity by installing a new video surveillance system, to detect illegal activity and potential structuring.

AJC failed to implement adequate policies and procedures to monitor transactions for structuring or to determine the source of chips redeemed when there was not an accompanying chip purchase, or to gather and utilize information and monitor customers in response to indicia of suspicious activity. For example, when questioned specifically about loan-shark activity, the former Facilities Manager replied, "It's a Casino. There's always [expletive] loan-sharks." The former Facilities Manager claimed that AJC's practice was to kick out suspected loan-sharks and bar them

from returning to the club. The former General Manager and the former Pai Gow Manager also acknowledged that loan-sharking activity at AJC was prevalent over a period of four to five years. AJC did not have adequate policies and procedures in place for ensuring that any of this information was used in identifying suspicious transactions and reporting the transactions to the broader law enforcement community through the filing of SARs. This shortcoming persisted even after state and federal law enforcement executed search warrants and made arrests at AJC in March 2011, and a federal indictment charging several of AJC's patrons was made public.

3. Independent Testing

AJC failed to conduct adequate independent testing.¹⁹ AJC's first independent test was conducted in August 2011, following the execution of search warrants and arrests by state and federal officials. This independent test was the first the card club had conducted — 13 years after FinCEN established the program requirement for casinos and card clubs.²⁰ Periodic independent testing enables a financial institution to identify and correct deficiencies in its AML program. Among other findings, the 2011 independent test identified weaknesses in AJC's policies and procedures for identifying suspicious transactions, issues with transaction aggregation in the multiple transaction log, the use of out of date SAR and CTR forms, an incomplete risk assessment, and the failure to file a SAR. This 2011 independent test, which was conducted six months after state and federal law enforcement executed their search warrants, specifically stated that "the types of suspicious activity that might occur in each department [are] not adequately defined." Further, it identified weakness in AJC's ability to monitor chip transfers between customers, suggesting that

¹⁹ 31 C.F.R. § 1021.210(b)(2)(ii).

²⁰ Amendments to Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping by Card Clubs, 63 F.R. 1919 (Jan. 13, 1998).

“surveillance should monitor the participants to determine whether there appears to be intent to circumvent reporting requirements.” At the time of the IRS 2015 examination, AJC had not conducted any additional independent testing since its initial test in 2011. The scope and frequency of independent testing must be commensurate with the money laundering and terrorist financing risks confronting the card club.²¹

B. Violations of Suspicious Activity Reporting Requirements

The BSA and its implementing regulations require a card club to report a transaction that the card club “knows, suspects, or has reason to suspect” is suspicious, if the transaction is conducted or attempted by, at, or through the card club, and if the transaction involves or aggregates to at least \$5,000 in funds or other assets.²² A transaction is “suspicious” if the transaction: (a) involves funds derived from illegal activity; (b) is intended or conducted in order to hide or disguise funds or assets derived from illegal activity, or to disguise the ownership, nature, source, location, or control of funds or assets derived from illegal activity; (c) is designed, whether through structuring or other means, to evade any requirement in the BSA or its implementing regulations; (d) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the card club knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (e) involves use of the card club to facilitate criminal activity.²³

²¹ 31 C.F.R. § 1021.210(b)(2)(ii).

²² 31 C.F.R. § 1021.320(a)(2).

²³ 31 C.F.R. § 1021.320(a)(2)(i)-(iv).

AJC failed to report suspicious transactions involving AJC chips used to facilitate loan-sharking. From 2009 to 2011, AJC senior-level employees and managers acknowledged the prevalence of loan-sharks; the former Pai Gow Manager claimed that he had reported “numerous occasions” of loan-sharking to local law enforcement and that AJC’s practice was to kick suspected loan-sharks out of the card club and bar them from returning.²⁴ Nevertheless, AJC failed to file SARs for several transactions, conducted during the period from 2009 to 2011, in which loan-sharks provided \$5,000 or more in AJC chips to customers on the gaming floor and within plain sight of AJC employees. In fact, AJC failed to file any SARs in 2009, filed four SARs in 2010, and filed eight SARs in 2011. None of the SARs filed discuss or identify loan-sharking.

While the volume of AJC’s SARs increased over time, AJC continued to experience difficulties in complying with suspicious activity reporting requirements. Over one quarter of the SARs that AJC filed between 2010 and 2014 were filed later than 90 days after the initial detection of facts that would constitute the basis for filing a SAR.²⁵ Additionally, AJC failed to file SARs for suspicious transactions conducted by 59 patrons. AJC admitted that it should have filed SARs on the transactions of ten of these patrons. At least 16 of these patrons had conducted multiple transactions at or just below \$10,000 over the course of one week or less. None of those transactions were flagged by AJC for review prior to the IRS examination. Other transactions include a patron redeeming \$40,000 in chips in one day with no cash-in or gaming activity, and a patron who redeemed over \$90,000 in chips over the course of approximately five months with no

²⁴ Notifying law enforcement does not relieve a card club of its obligation to file a timely SAR. 31 CFR § 1021.320(a)(3) (“In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a [timely SAR]...”). Reports filed under the BSA are a source of financial intelligence for multiple agencies.

²⁵ 31 C.F.R. § 1021.320(b)(3).

cash-in activity. AJC failed to produce any records that its examinations of the available facts provided a reasonable explanation for the transactions.²⁶

III. CIVIL MONEY PENALTY

FinCEN has determined that AJC willfully violated the BSA and its implementing regulations and that grounds exist to assess a civil money penalty for these violations.²⁷ FinCEN has determined that the appropriate penalty in this matter is \$8,000,000.

FinCEN may impose a civil money penalty of \$25,000 for each willful violation of AML program requirements that occurs on or before November 2, 2015.²⁸ The BSA states that a “separate violation” of the requirement to establish and implement an effective AML program occurs “for each day that the violation continues.”²⁹ FinCEN may impose a penalty not to exceed the greater of the amount involved in the transaction (but capped at \$100,000) or \$25,000 for each willful violation of SAR requirements that occurs on or before November 2, 2015.³⁰

FinCEN reviewed financial statements provided by AJC and considered AJC’s financial condition and ability to pay. FinCEN considered the size and sophistication of AJC, one of the larger clubs operating in California, generally with few customers from outside the state. Furthermore, FinCEN noted the severity and duration of AJC’s BSA violations. Over a period of eight years, AJC failed to implement adequate internal controls, to conduct sufficient independent

²⁶ 31 C.F.R. § 1021.320(a)(2)(iii).

²⁷ 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820.

²⁸ For each willful violation of AML program requirements that occurs after November 2, 2015, a civil money penalty of \$54,789 may be imposed. 31 C.F.R. § 1010.821.

²⁹ 31 U.S.C. § 5321(a)(1).

³⁰ For each willful violation that occurs after November 2, 2015, the ceiling is increased from \$100,000 to \$219,156, and the floor is increased from \$25,000 to \$54,789. 31 CFR § 1010.821.

testing, and to comply with SAR requirements. FinCEN also considered AJC's awareness of loan-sharking activity on its premises, as well as AJC's culture of compliance. AJC's adoption of remedial measures and its cooperation with the IRS examination and FinCEN's investigation were factored into FinCEN's determination. FinCEN considered its recent enforcement actions against casinos and card clubs and the impact that its penalty against AJC would have on compliance with the BSA by the casino and card club industry.

FinCEN hereby imposes a penalty in the amount of \$8,000,000, with \$3,000,000 suspended pending compliance with the Undertakings set forth in Section IV of the Consent. If AJC fails to comply with the Undertakings set forth in Section IV of the Consent, AJC shall pay the entire penalty of \$8,000,000. Nothing in the Consent shall limit the ability of FinCEN to enforce the Undertakings through means other than the assessment of civil money penalties.

IV. UNDERTAKINGS

In furtherance of its compliance efforts, AJC has undertaken to:

- (1) Within 60 days from the date of this ASSESSMENT, at its own cost, hire a qualified independent consultant, subject to FinCEN approval, to review the effectiveness of AJC's AML program. The independent consultant will conduct two reviews, with a review conducted for each year (a "Review Period") during the two-year period beginning on the date of this ASSESSMENT OF CIVIL MONEY PENALTY (ASSESSMENT). Within 60 days from the end of each Review Period, the independent consultant will submit to FinCEN and to AJC a written report: (1) addressing the adequacy of AJC's AML program; (2) describing the review performed and the conclusions reached; and (3) describing any recommended modifications or enhancements to AJC's AML program. Interim reports, drafts, workpapers or other

supporting materials will be made available to FinCEN upon request. AJC will adopt and implement any recommendations made by the independent consultant or, within 30 days after issuance of a report, propose alternatives. The independent consultant will provide a written response to any proposed alternatives within 60 days. Within 30 days after issuance of a report or a written response from the consultant regarding AJC's proposed alternatives, AJC will provide FinCEN with a written report detailing the extent to which it has adopted and implemented recommendations made by the independent consultant.

- (2) Employ, or continue to employ a compliance officer to ensure day-to-day compliance with its obligations under the BSA and implementing regulations.
- (3) Within 45 days from the date of this ASSESSMENT, adopt and implement an AML program that includes policies, procedures, and internal controls for:
 - a. Obtaining and utilizing information from propositional players; and
 - b. Creating, retaining, and utilizing records related to backline betting, kum kum betting, and kum kum banking.
- (4) Within 60 days from the date of this ASSESSMENT, at its own cost, hire a qualified independent consultant, subject to FinCEN approval, to conduct a "look-back." The independent consultant will review transactions or attempted transactions that occurred during the period from December 31, 2011 through December 31, 2014 (Covered Transactions) to determine whether activity was properly identified and reported under 31 U.S.C. § 5318(g) and implementing regulations. The independent consultant will prepare and deliver a detailed written report to FinCEN and AJC by December 31, 2018. Interim reports, drafts, workpapers or other supporting materials will be made available

to FinCEN upon request. AJC will comply with any recommendation or request from the independent consultant or FinCEN that AJC file SARs for Covered Transactions.

- (5) Certify, in writing, compliance with the Undertakings set forth above. The certification shall identify the Undertaking, include written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FinCEN may make reasonable requests for further evidence of compliance, and AJC will provide such evidence. The certification and supporting material will be submitted to FinCEN within 30 days of completion of each Undertaking.

V. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, AJC consents to this ASSESSMENT and to the civil money penalty and Undertakings set forth therein, and admits that it violated the BSA's program and reporting requirements.

AJC recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN or any employee, agent, or representative of FinCEN to induce AJC to enter into the CONSENT, except for those specified in the CONSENT.

AJC understands and agrees that the CONSENT embodies the entire agreement between AJC and FinCEN. AJC further understands and agrees that there are no express or implied promises, representations, or agreements between AJC and FinCEN other than those expressly set forth or referred to in this document and that nothing in the CONSENT or in this ASSESSMENT is binding on any other agency of government, whether Federal, State, or local.

VI. PUBLIC STATEMENTS

AJC expressly agrees that it shall not, nor shall its attorneys, agents, partners, directors, officers, employees, affiliates, or any other person authorized to speak on its behalf, make any public statement contradicting either its acceptance of responsibility set forth in the CONSENT or any fact in the DETERMINATIONS section of the CONSENT. FinCEN has sole discretion to determine whether a statement is contradictory and violates the terms of the CONSENT. If AJC, or anyone claiming to speak on behalf of AJC, makes such a contradictory statement, AJC may avoid a breach of the agreement by repudiating such statement within 48 hours of notification by FinCEN. If FinCEN determines that AJC did not satisfactorily repudiate such statement(s) within 48 hours of notification, FinCEN may void, in its sole discretion, the releases contained in the CONSENT and reinstitute enforcement proceedings against AJC. AJC expressly agrees to waive any statute of limitations defense to the reinstated enforcement proceedings and further agrees not to contest any admission or other findings made in the CONSENT. This paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of AJC in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of AJC or unless AJC later ratifies such claims, directly or indirectly. AJC further agrees that, upon notification by FinCEN, AJC will repudiate such statement to the extent it contradicts either its acceptance of responsibility or any fact in the CONSENT.

VII. RELEASE

Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, settles all claims that FinCEN may have against AJC for the conduct described in Section II of the CONSENT. Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, does not release any claim that FinCEN may have for conduct

