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3/16/10

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO LIMS No. [redacted]

(b)(2)

DIP/mortgage Fraud

Federal Deposit Insurance Corporation, et al.)
Plaintiff(s),)
vs.)
American Capital Financial Services, et al.)
Defendant(s))

CASE NO. PC 20080377 ~~PC 1114365~~
REF. NO. 1110012560
STIPULATION FOR SETTLEMENT
C.C.P. § 664.6

This case having come before Hon. Read Ambler (Ret.) for mediation at the offices of JAMS, and the parties having conferred, it is hereby stipulated that this matter is deemed settled pursuant to the following terms and conditions:

1. ROBERT TUCKER shall pay to plaintiff(s) ~~and to his/her/their attorney~~
~~FDIC~~ clo plaintiff's counsel the total sum of \$ 50,000.00 in full settlement and compromise of this action and in release and discharge of any and all claims and causes of action made in this action, and in release and discharge of any and all claims and causes of action arising out of the events or incidents referred to in the pleadings in this action.

2. Plaintiff(s) agree to accept said sum in full settlement and compromise of the action and agree that such payment shall fully and forever discharge and release all claims and causes of action, whether now known or now unknown, which plaintiff(s) has against any and all of the defendant(s) ^{Tucker} in that action arising out of the incident, ^{Defendant Tucker's} defined as the appraisal and its subject property only, as identified in the lawsuit.

This settlement includes an express waiver of Civil Code § 1542, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his ^{her} settlement with the debtor."

The 1542 waiver and ~~full~~ release applies only to ^{Defendant Tucker's} ~~the~~ appraisal and ^{subject} property identified in the lawsuit.

3. Plaintiff(s) further agree to sign, acknowledge and deliver to defendant(s) a standard form of a

Tucker

subject property identified in the lawsuit

against Tucker

Release of all such claims and causes of action and to sign and deliver to defendants a standard form of Dismissal with Prejudice of the action, ~~not later than~~ promptly after the FDIC negotiates the checks, but not later than 60 days ~~unless it possible~~ if possible.

4. Plaintiff(s) shall protect, defend and indemnify the defendants in said action, (and his/her/their liability insurance carrier(s)) against any and all liens, subrogation claims and other rights that may be asserted by any person against the amount paid in settlement of the action or against any recovery by the plaintiff(s) in the action.

5. Counsel for each of the parties to this agreement represents that he/she has fully explained to his/her client(s) the legal effect of this agreement and of the Release and Dismissal with Prejudice provided for herein and that the settlement and compromise stated herein is final and conclusive forthwith, and each attorney represents that his/her client(s) has freely consented to and authorized this agreement.

6. Payment of the stated settlement amount shall be made by as soon as reasonably possible, but not later than March 11, 2010.

7. Unless otherwise stated herein, each party will bear its own attorneys' fees and court costs.

8. Other terms and conditions:

A. FDIC represents and warrants that it ~~is~~ is the sole owner of the rights and claims prosecuted in the lawsuit, and has the authority to execute the stipulation for Settlement ~~to~~ and to release the claims being released herein.

B. Plaintiff's counsel will promptly file a Notice of Settlement.

9. Any provisions of Evidence Code §§ 1115 - 1128 notwithstanding, this Stipulation is binding and may be enforced by a motion under Code of Civil Procedure § 664.6 or by any other procedure permitted by law in the applicable state or federal court.

10. This Stipulation is admissible and subject to disclosure for purposes of enforcing this settlement agreement pursuant to CCP § 664.6, or any other procedure permitted by law, and the provisions of the confidentiality agreement signed by the parties relative to this mediation are waived with respect to this Stipulation.

Date: FEB. 11, 2010

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Michael S. Winsten Esq.
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