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LIMS Mr [Redacted]
DIF/Mortgage Fraud

ENTERED
1/29/10

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") is entered into by and between Plaintiff Federal Deposit Insurance Corporation as Receiver of Downey Savings and Loan Association, F.A. ("FDIC as Receiver"), on the one hand, and Defendant Firmac, Inc. ("Defendant" or "Firmac"), on the other hand. FDIC as Receiver and Defendant are collectively referred to herein as "Settling Parties" or individually as a "Settling Party."

RECITALS

This Settlement Agreement is entered into with respect to the following generalized facts:

A. On December 28, 2007, Downey Savings and Loan Association, FA. ("Downey Savings") filed a complaint against Firmac, Inc. ("Firmac"), Virgilio Paulino ("Paulino"), and Does 1 through 20 (collectively the "Defendants") generally asserting causes of action for breach of contract, negligent misrepresentation, fraud, breach of fiduciary duty, and unjust enrichment ("Complaint"). The matter was assigned Case No. MSC 0802550, in the Superior Court for the County of Contra Costa, State of California, (the "Action").

B. The Action arose out of a \$544,000 mortgage loan issued by Downey Savings to Paulino ("Borrower") on or about December 12, 2005 (the "Subject Loan") secured by the real property commonly known as 201 Weathermark Court, Vallejo, California 94591 (the "Subject Property").

C. In the Action, Downey Savings asserted claims against Defendants alleging, among other things, that Defendants had submitted to Downey Savings a mortgage loan package on behalf of the Borrower, which included misrepresentations regarding the Borrower's income, assets, and employment.

D. Downey Savings contended in the Action that, as a result of Downey Savings reliance upon those misrepresentations and/or inaccuracies, it sustained substantial damages.

E. Firmac denied the allegations made in the Complaint. Paulino failed to respond to the Complaint.

F. On November 21, 2008, FDIC as Receiver of Downey Savings became the successor-in-interest to Plaintiff's claims in this matter.

Settling Parties each desire to settle and terminate the dispute existing between and among them as outlined in the Action as well as all other known or unknown claims they each might have concerning any of the facts surrounding the transaction, or series of transactions that underlie the Action, on the terms set forth below.

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AGREEMENT

NOW THEREFORE, for good and valuable consideration, including the mutual covenants and conditions contained herein, the Settling Parties agree as follows:

1. Settlement Amount. Firmac shall deliver payment to Plaintiff's counsel in immediately available funds payable to "Marshack Hays, LLP, Client Trust Account", in the total amount of Thirty Thousand dollars and no/100 (\$30,000.00) ("Settlement Payment") within five (5) days of the effective date of this Agreement. The Settlement Payment shall be delivered via overnight mail to Sean A. Kading, Marshack Hays, LLP, 5410 Trabuco Road, Suite 130, Irvine, California 92620.

2. Releases. Conditioned upon delivery of the Settlement Payment, FDIC as Receiver and Firmac fully and forever release and discharge each other, and their respective assignees, subsidiaries, transferees, predecessors and successors in interest, present and former employees, insurers, servants, agents, representatives, independent contractors, officers, directors, and parent corporations, from and against all known actions, proceedings, causes of action, claims for relief, demands, rights, interests, damages, losses, costs, expenses, disbursements (including attorneys' fees and costs), obligations, liabilities and other claims of every nature whatsoever arising from or related to the transaction, or series of transactions, underlying the Action (collectively, the "Claims"). Notwithstanding the foregoing, this release does not and is not intended to release claims or actions, if any, arising from or relating to properties or loans other than the Subject Property and the Subject Loan described above.

2.1 No Release of Non-Settling Parties. Nothing contained herein shall be interpreted as a release or dismissal of any claims or causes of action asserted in the Action or otherwise as against Paulino or Does 1 through 20. FDIC as Receiver expressly reserves the right to continue to prosecute any and all claims and causes of action as against these non-settling parties.

3. Waiver of Civil Code Section 1542. Each of the Settling Parties expressly waives and relinquishes any and all rights and benefits conferred on them by California *Civil Code* §1542 and any similar enactment of, or other such rights afforded by, the State of California, the United States or any other state territory of the United States. Section 1542 of the California *Civil Code* states:

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

Each of the Settling Parties acknowledges that the effect and import of California *Civil Code* § 1542, and the foregoing waiver and relinquishment of those rights, are understood by them and made voluntarily. Each of the Settling Parties acknowledges that if they hereafter discover facts different than or in addition to those that they now know or believe to be true, that said release shall be given full force and effect according to each and all of its express terms and conditions,

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notwithstanding such different or additional facts. The discovery of such different facts shall not in any way alter or affect the release contained herein.

4. Dismissal of Action As Against Firmac. Forthwith upon receipt of the Settlement Payment specified in section 1 above, Plaintiff shall file a request for dismissal with prejudice of the Complaint *as against Firmac only*, and provide Firmac with a conformed copy after entry of dismissal is made by the Court.

5. Waiver of Attorneys' fees and costs. Upon execution of this Agreement, each of the Settling Parties shall bear his or its own attorneys' fees and costs in the Action.

6. No Admission of Liability. Neither the existence of this Agreement nor the conduct of any of the Parties shall constitute or be construed as an admission of liability or any wrongdoing whatsoever on the part of the Parties.

7. Interpretation. In the case of any uncertainty or ambiguity regarding any part of this Agreement, the language shall be construed in accordance with its fair meaning rather than being interpreted against the party who caused the uncertainty to exist.

8. Parties in Interest Except as expressly stated in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer third-party beneficiary status or to otherwise confer any rights or remedies on any person or entity (collectively "Third Party"), other than the Settling Parties. Nor shall any provision hereof afford any Third Party any right of subrogation, indemnity, contribution, set-off or action over and against any party to this Agreement.

9. Informed Consent. Each Party acknowledges that it has selected, or been afforded the opportunity to select, an attorney of its choice to review this Agreement and all related matters. Each Party declares that such party has received sufficient information, either through such Party's own legal counsel or other sources of such party's own selection, so as to be able to make an intelligent and informed judgment to enter into this Agreement. Each party further states that each has read this Agreement in its entirety prior to executing this Agreement, and that each has executed this Agreement voluntarily, with competence and capacity to contract and with knowledge of the terms, significance and legal effect of this Agreement. By executing this Agreement, it is understood by each party that substantial rights may be compromised and/or waived in their entirety.

10. Attorneys' Fees. If any action, motion or proceeding at law or in equity is instituted to enforce or interpret the terms of this Agreement, the prevailing party or parties therein shall be entitled to an award of reasonable attorneys' fees, costs, and necessary disbursements, as determined by a court of competent jurisdiction, in addition to any other relief to which any of the Settling Parties may be entitled.

11. Further Assurances and Cooperation. The Settling Parties shall execute all documents and perform all acts necessary or appropriate to effectuate the performance of this Agreement. In addition, Firmac and its principals shall cooperate and provide any requested assistance to the FDIC in its efforts to secure a judgment against Paulino.

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12. Severability. It is intended that any portion of this Agreement shall be treated as separate and divisible, and if any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Agreement is unaffected.

13. Complete Instrument. This Agreement contains the complete understanding made between or among the Settling Parties with respect to the claims being settled and released by this Agreement. This Agreement cannot be amended or modified in any manner except by a writing executed by each of the Settling Parties or by their valid successor(s). Each of the Settling Parties acknowledges that no representations, warranties, covenants, assurances or other promises not specifically set forth in this Agreement have been made by any party in connection with the subject matter of this Agreement, nor is any party relying on any such conduct in entering into this Agreement. Any negotiations or other communications between the Parties relating to the subject matter of this Agreement are of no force or effect and are superseded by this document.

14. Counterparts. This Agreement may be signed in counterparts, and each counterpart shall have the same force and effect as though the signatures were contained in a single document. A faxed signature shall be considered an original signature for all purposes under this Agreement.

15. Time of Essence. Time is of the essence of each provision of this Agreement wherein time is a factor.

16. Applicable Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be the courts located in the County of Contra Costa, California, in accordance with applicable law.

17. Successors and Assigns. The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, each of the undersigned Settling Parties has executed this Agreement effective as of November 30, 2009.

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER OF
DOWNEY SAVINGS AND LOAN
ASSOCIATION, F.A.

(b)(6)
DATED: 1-5-2010

By: Kevin Wheelwright

FIRMAC, INC.

DATED: 12-3-2009

By: JULIET E. NATIVIDAD
Its: PRESIDENT

(b)(6)

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ENTERED

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 CV 114365~~
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

(b)(6) [Redacted]

(b)(6) [Redacted]

Michael S. Winsten Esq.
Winsten Law Group

[Redacted]

(b)(6) [Redacted]

Federal Deposit Insurance Corporation
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Section Chief, Professional Liability Section

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Eric Hartnett Esq.
L/O Peter N. Brewer

[Redacted]

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Robert E. Tucher
(b)(6)


Kevin Wheelwright


Alpha Valuation Group

