

## SETTLEMENT AGREEMENT AND GENERAL RELEASES

This Settlement Agreement and General Release (the "Agreement" or "Settlement Agreement") is entered into as of May 9, 2011, by and between Plaintiff Federal Deposit Insurance Corporation as Receiver of Downey Savings and Loan Association, F.A. ("FDIC as Receiver" and "Downey Savings" respectively), on the one hand, and Defendant David Nguyen ("Defendant" or "NGUYEN"), on the other hand. FDIC as Receiver and Defendant, including Defendant's respective assignees, subsidiaries, transferees, predecessors and successors in interest are collectively referred to herein as "Settling Parties" or individually as a "Settling Party." The signatories to this Settlement Agreement will hereinafter be referred to jointly as the "Parties."

### RECITALS

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

A. On November 6, 2007, Investors Mortgage Asset Recovery Company, LLC ("IMARC"), filed its complaint herein in the Superior Court for the State of California, County of Orange, Case No. 07CC11683 against, *inter alia*, NGUYEN (the "IMARC Action"). On or about April 14, 2008, the IMARC Action was transferred to the Superior Court for the State of California, County of Santa Clara (the "Court") and assigned Case No. 1-08-CV-110663. On December 15, 2008, IMARC assigned all of its right, title and interest in and to any and all claims arising from or related to the loans and claims alleged in the IMARC Case to FDIC as Receiver. On December 29, 2008, the Court entered an order substituting the FDIC as Receiver for IMARC as Plaintiff in the IMARC Case.

B. On April 10, 2008, FDIC as Receiver filed its First Amended Complaint (the "Complaint") in the IMARC Case against Innovia Estates And Mortgage Corp. ("Innovia"), A California Corporation, David Nguyen, An Individual, Geena Nguyen, An Individual, Ana Milenewicz, An Individual, Blanca Guardado, An Individual, Alison Huynh, An Individual, Anthony Nguyen, An Individual, Pauline Duong, An Individual, Lucita Relucio, An Individual, Silvia Magana, An Individual, Alejandro Lezama, An Individual, Dawn L. Tafoya, An Individual, Charlita V. Corpus, An Individual, Yin Phin, An Individual, Jose Luis Vera, An Individual, Refugio Martina Leyva, An Individual, Na Sona Kea, An Individual, Sengour Houy, An Individual, Juan Carlos Alfaro, an individual, NGUYEN and DOES 1-20, inclusive (collectively the "Defendants") (hereinafter the "Action").

B. The Action arose out of a series of mortgage loans secured by residential property brokered by Innovia and issued by Downey Savings to various borrowers as more specifically set forth in the Complaint. The Complaint alleges fraud, implied contractual indemnity, equitable indemnity, unjust enrichment, negligent misrepresentation, breach of fiduciary duty, breach of written contract, negligence per se and negligence against the Defendants, including NGUYEN.

C. NGUYEN denies all liability for such allegations made in the Complaint; and the Parties desire to avoid the expense and inconvenience of litigation and resolve and settle all claims

that were asserted in or could have been asserted against NGUYEN in the Action.

D. In entering into this Settlement Agreement, NGUYEN admits no wrongdoing whatsoever. It is understood and agreed that this Settlement Agreement does not constitute and is not constructed as an acknowledgement of wrongdoing, liability, or responsibility in any form on the part of NGUYEN, but the Settlement Agreement is made by and on behalf of NGUYEN for the sole purpose of terminating the controversies which exist between the Parties and avoiding the expense and inconvenience of litigation.

E. NGUYEN has represented to the FDIC as Receiver that no insurance exists which did, does or might provide coverage for the claims asserted in the action. FDIC as Receiver agreed to enter into this Agreement in reliance upon such representations, and the Parties wish to provide for refiling or reinstatement of the Action if it is discovered that such insurance does exist.

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.

#### **AGREEMENT**

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

1. Initial Payment. NGUYEN shall deliver payment to Plaintiff's counsel in immediately available funds payable to "Law Offices of Albert J. Tumpson, Trust Account", in the total amount of Fifty Thousand Dollars and no/100 (\$50,000.00) ("Initial Settlement Payment") on or before June 23, 2011. The Settlement Payment shall be delivered to Albert J. Tumpson, Law Offices of Albert J. Tumpson, 9595 Wilshire Blvd., Suite 305, Beverly Hills, CA 90212.

2. Second Payment. NGUYEN shall deliver a second, additional payment to Plaintiff's counsel in immediately available funds payable to "Law Offices of Albert J. Tumpson, Trust Account", in the total amount of Twenty-Five Thousand Dollars and no/100 (\$25,000.00) ("Second Settlement Payment") on or before December 9, 2011. The Second Settlement Payment shall be delivered to Albert J. Tumpson, Law Offices of Albert J. Tumpson, 9595 Wilshire Blvd., Suite 305, Beverly Hills, CA 90212.

3. Judgment on Failure to Make Payment. Should NGUYEN fail to make either the Initial Settlement Payment or the Second Settlement Payment within the time set forth above, then, in that event, the parties agree that judgment shall be immediately entered against NGUYEN in the amount of Five Hundred Thousand Dollars (\$500,000.00); provided, however, that if NGUYEN notifies the FDIC in writing received on or before 5:00 p.m. on June 23, 2011 that he has made a good faith effort to secure payment and that payment will be made within fifteen (15) days, then, in that event, the said judgment shall be entered on or after July 9, 2011 if and only if NGUYEN fails to make the Initial Settlement Payment by July 8, 2011. The Settling Parties agree that, upon any

failure to perform under the terms of this Agreement or if, any party may apply *ex parte* to the Court for entry of judgment or any other appropriate relief on notice given no later than 10:00 a.m. on the day before the *ex parte* application is to be presented.

4. Continuing Jurisdiction. The Settling Parties agree to sign contemporaneously with this Agreement and submit to the Court a stipulation for settlement and order (the "Stipulation") incorporating the terms of this Agreement, and, in the Stipulation, the parties shall, and hereby do, request the Court, pursuant Code of Civil Procedure § 664.6, to retain jurisdiction of this case, notwithstanding the dismissal hereof as provided herein, to enforce the settlement reflected in this Agreement until all obligations herein are fully performed.

5. Compromise. The Parties agree and acknowledge that this Agreement is the result of a compromise of disputed claims and is not intended to be an admission by the Parties of any liability, wrongdoing, or responsibility on their part or on the part of their predecessors, successors in interest, agents, parent corporations, subsidiaries, affiliates, present and former owners, present and former shareholders, present and former members, present and former principals, present and former officers, present and former directors, or present and former attorneys. Indeed, the Parties expressly deny any such liability, wrongdoing or responsibility.

6. Releases. Conditioned upon delivery of the settlement payments described above, FDIC as Receiver and NGUYEN fully and forever release and discharge each other, and their respective assignees, subsidiaries, transferees, predecessors and successors in interest (Releasee(s)), 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 alleged in the Complaint (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 loans and properties securing them alleged in the Complaint.

6.1 No Release of Non-Settling Parties or Non-Releasee(s). 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 any nonsettling party or non-Releasee. FDIC as Receiver expressly reserves the right to prosecute any and all claims and causes of action as against any non-settling party or non-Releasee.

6.2 Claims Against Receivership. All Settling Parties waive their right, if any, to file a claim against the receivership estate of Downey Savings and Loan Association, F.A. and any proofs of claim already filed shall automatically be deemed withdrawn.

7. Waiver of Civil Code Section 1542. FDIC and NGUYEN expressly agree that this Agreement extends to all Claims which arose prior to the execution of this Agreement, whether set forth in a demand letter, pleading, charge, or complaint referred to herein. Each of the Settling Parties expressly waives and relinquishes any and all rights and benefits conferred on them by California *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 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."*

The parties acknowledge and agree that this Release pertains only to Claims and Actions which pertain to or arise from the allegations of the Complaint, and the entire Action.

8. Dismissal of Action As Against NGUYEN. Upon FDIC's receipt of the Initial Settlement Payment and the Second Settlement Payment, Plaintiff shall file a request for dismissal without prejudice of the Complaint as against NGUYEN, and provide NGUYEN with a conformed copy after entry of dismissal is made by the Court. Except as otherwise provided herein, Plaintiff agrees not to file, refile or otherwise reinstitute any suit, proceeding or claim in any way related to or arising from the allegations of the Complaint.

9. Representations Re: Insurance. NGUYEN represents and warrants to Plaintiff that there is not now, nor has there ever been any policy of insurance through which NGUYEN was, is or might be insured in any manner against any of the damages, claims or actions alleged in, related to or arising from the allegations of the Complaint. NGUYEN acknowledges and agrees that Plaintiff is relying upon such representation and warranty in entering into this Agreement and would not have entered into this Agreement if such representation and warranty had not been made or were untrue. If it is determined after the execution hereof that such representation or warranty was in any way untrue or that any such insurance exists, then, notwithstanding any other provision of this Agreement, NGUYEN agrees that the releases herein shall be revoked, null, void and of no effect and that Plaintiff or any successor interest to Plaintiff may file, refile or reinstitute against NGUYEN any and all suits, proceedings, actions or claims which in any way relate to or arise from the allegations of the Complaint. In case of such filing, refiling or reinstatement, Plaintiff covenants not to execute against or attempt to collect from NGUYEN any judgment or other award entered or issued as a result thereof, and NGUYEN agrees to, and hereby does, waive and relinquish any defense to such filed, refiled or reinstated suit, proceeding, action or claim based upon the passage of time, laches or any statute of limitations. The covenant not to execute or attempt collection recited in this Paragraph is intended to and does apply to NGUYEN only, and does not extend to any other Defendant or any other person or entity, including, but not limited to, any insurer.

10. Confidentiality. NGUYEN, his employees, representatives, agents, attorneys, and accountants, represent and agree that they will keep the terms and contents of this Agreement completely confidential, and will not disclose any information concerning this Agreement, or concerning the negotiations leading up this Agreement, to anyone except as required by law and/or court process, or to parties who reasonably must be informed of the terms of the Agreement and who will be advised of, and bound by, this confidentiality clause. Any failure by NGUYEN, his employees, representatives, agents, attorneys, or accountants to maintain the confidentiality of the negotiations leading to this Agreement, or the fact of, or the terms of, this Agreement shall constitute a material breach of this Agreement, and all Parties injured by such failure shall be entitled to recover damages, as well as reasonable attorneys' fees and costs incurred in connection

with any action to recover such damages.

10.1 Notwithstanding the foregoing confidentiality provision, the parties each acknowledge and agree that this paragraph has no application or impact on the FDIC, that pursuant to 12 USC Section 1821(s) the FDIC may not enter into any agreement which prohibits the FDIC from disclosing the terms of any settlement, and that by executing this Agreement the FDIC and its officers, directors, employees, attorneys, successors, assigns and/or agents are not and shall not be prohibited from disclosing any or all of the facts at issue in the Action, and/or the terms of this Settlement Agreement.

11. 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.

12. 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.

13. 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. Each Party acknowledges that he or it has had the opportunity to review this agreement, to consult with counsel, and to negotiate the terms hereof, and agrees that any rule, law or holding which would mandate or have the effect of construing this agreement against the drafter hereof shall not be applied hereto.

14. 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.

15. 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.

16. Further Assurances. The Settling Parties shall execute all documents and perform all acts necessary or appropriate to effectuate the performance of this Agreement.

17. 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.

18. 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.

19. 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 or electronically transmitted signature shall be considered an original signature for all purposes under this Agreement.

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

21. 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.

22. 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 Orange County, California, in accordance with applicable law.

[This portion of the page has been left intentionally blank]

23. Enforcement of Settlement and C.C.P. §664.6. The Settling Parties further agree that the Santa Clara County Superior Court in the Action shall retain jurisdiction over this case for all purposes pursuant to California Code of Civil Procedure §664.6.

IN WITNESS WHEREOF, each of the undersigned Settling Parties has executed this Agreement effective as of the last date set forth below.

DATED: 5/16/2011

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



(b)(6)

By: Kevin Whelan Wright, Section Chief  
Professional Liability and Financial Crimes  
Section

DATED: \_\_\_\_\_

\_\_\_\_\_  
DAVID NGUYEN

23. Enforcement of Settlement and C.C.P. §664.6. The Settling Parties further agree that the Santa Clara County Superior Court in the Action shall retain jurisdiction over this case for all purposes pursuant to California Code of Civil Procedure §664.6.

IN WITNESS WHEREOF, each of the undersigned Settling Parties has executed this Agreement effective as of the last date set forth below.

DATED: \_\_\_\_\_

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

\_\_\_\_\_  
By: Kevin Wheelwright, Section Chief  
Professional Liability and Financial Crimes  
Section

DATED: 05/10/2011

(b)(6)

\_\_\_\_\_

DAVID NGUYEN