



LIMS Nr (b)(2)
DEF/Mortgage Fraud



SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of May 19, 2010, by and between Impac Funding Corporation ("Impac") and the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. ("FDIC")

I. RECITALS

A. Impac and IndyMac Bank, F.S.B. ("IndyMac") entered into written settlement agreement on March 21, 2008 ("IndyMac Settlement Agreement") relating to certain mortgage loan repurchase and indemnification demands made by IndyMac upon Impac. Thereafter, IndyMac was placed in receivership by the Federal Deposit Insurance Corporation.

B. On September 24, 2009, the FDIC filed an action entitled Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. v. Impac Funding Corporation in the United States District Court for the Central District of California, Case No. CV09-6965 (hereafter the "Action"). The FDIC contends in the Action that there is a remaining balance of approximately Two Million One Hundred Thousand Dollars (\$2,100,000) owed by Impac under the IndyMac Settlement Agreement.

C. Impac sold mortgage loans to IndyMac. The FDIC further contends, independent of the Action, that Impac is obligated to repurchase additional mortgage loans or indemnify for losses sustained on mortgage loans sold by Impac to IndyMac.

D. Impac contends that IndyMac breached the warranties and representations in the IndyMac Settlement Agreement, thus entitling Impac to a set off of the entire sum in dispute under the IndyMac Settlement Agreement. Impac further disputes IndyMac's additional repurchase and indemnification demands.

In view of the foregoing, and without any admission of liability or fault, it is the mutual intention of the parties hereto to fully and finally settle any and all claims with respect to the Action, the matters set forth in the Recitals above, and any other claim which exists or may exist between them, as set forth below.

II. AGREEMENT

1. **Settlement Amount.** The total amount of the settlement between the FDIC and Impac is Four Million Five Hundred Thousand Dollars (\$4,500,000) ("Settlement Amount"). However, the FDIC will accept the sum of Three Million Six Hundred Thousand Dollars (\$3,600,000) in full satisfaction of the Settlement Amount if timely payments are made by Impac pursuant to the payment plan set forth below.

2. **Payment Plan.** Impac shall pay to the FDIC the total sum of Three Million Six Hundred Thousand Dollars (\$3,600,000) ("Settlement Funds") on the following payment schedule:

- a. \$1,500,000 on or before May 28, 2010;
- b. \$116,666.67 per month for 17 months, commencing on June 28, 2010, and on the 28th day of each month thereafter;
- c. \$116,666.61 on November 28, 2011.

See, Payment Schedule, attached hereto as Exhibit A.

Payments shall be made by wire transfer to the following account:

	Bank Name:	Wells Fargo Bank, N.A.
	Address:	535 N. Brand Blvd.
	City, State, Zip:	Glendale, CA 91203
(b)(4)	ABA Number:	[redacted]
	Account Name:	Mortgage Recovery Law Group Trust Account
(b)(4)	Account Number:	[redacted]
	Contact:	Shannon Mazepink
	Reference:	Impac Settlement

3. **Notice of Default.** In the event Impac defaults by failing to make a timely payment as set forth in this Agreement, the FDIC shall give written notice via email or fax of the default to Impac Funding Corporation, c/o Stephen C. Wichmann, Vice President/Associate General Counsel, 19500 Jamboree Road, Irvine, CA 92612.

(b)(4),(b)(6)

[redacted] ph. no. [redacted] fax no. [redacted]

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4. **Time to Cure.** Impac shall have five (5) business days from date of the notice to cure the default. In the event that Impac fails to cure the default within five (5) business days, the entire Settlement Amount of Four Million Five Hundred Thousand (\$4,500,000) (less any payments made by Impac pursuant to the terms of this Agreement) will be immediately due and payable, and the FDIC may pursue the immediate payment in full of all sums remaining due without further demand and may invoke all remedies permitted by applicable law. The FDIC shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, attorneys' fees and costs incurred in collecting all sums owing.

5. **Dismissal of Action.** The parties agree that they will enter into a Stipulation for Dismissal (With Prejudice). Within ten (10) calendar days of full execution of this Agreement and receipt of the first payment due, the FDIC will file the Stipulation for Dismissal (With Prejudice).

6. **Mutual General Release**

Except for the obligations set forth herein, Impac, on the one hand, and the FDIC, on the other hand, for themselves, and for each and all of their respective predecessors, successors, related entities, assigns, partners, administrators, agents, trustees, beneficiaries, heirs, spouses, issue, executors, attorneys and all those claiming by, through, under or in concert with them, or any of them (hereinafter collectively referred to as the "Releasors"), hereby releases and discharges the other, and all of their respective predecessors, successors, related entities, assigns,

partners, administrators, agents, trustees, beneficiaries, heirs, spouses, issue, executors, attorneys and all those claiming by, through, under or in concert with them, or any of them (hereinafter collectively referred to as the "Releasees"), from any and all claims, causes of action, debts, obligations, losses, damages, liabilities, costs or demands of whatever nature, whether anticipated or unanticipated, whether known or unknown, and whether suspected or unsuspected, which each Releasor has, or which it may have, may claim to have, or own or hold against the Releasees, or against any of them, with respect to any matter whatsoever, whether known or unknown, arising out of (1) the subject matter of the Action, (2) the IndyMac Settlement Agreement, (3) all repurchase and indemnification demands by IndyMac pursuant to any Mortgage Loan Purchase and Interim Servicing Agreements entered into between Impac and IndyMac, and/or (4) any loans sold directly from Impac to IndyMac.

A. Waiver of Civil Code Section 1542.

Releasors acknowledge that they may hereafter discover claims or facts now unknown or unsuspected, or in addition to, or different from, those which he now knows or believes to be true with respect to this Release. Releasors intend by this Release to release fully, finally, and forever all known and unknown claims notwithstanding the discovery or existence of any such additional or different claims or facts before or after execution of this Agreement, and that the Release set forth above constitutes a waiver of all rights which the Releasors may have by virtue of the provisions of California Civil Code Section 1542, which provides:

"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."

Releasors acknowledge that they have consulted with counsel concerning the effect and import of this provision, and they agree to waive such provision.

7. **IndyMac Only.** Notwithstanding any other provision in this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed any claims against Impac arising out of existing or failed financial institutions other than IndyMac.

8. **FDIC Only.** Notwithstanding any other provision in this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed any action taken by any other federal agency. In addition, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district.

9. **Enforcement of Agreement.** The parties hereby submit to the jurisdiction of, and waive any venue objections against, the United States District Court, Central District of California, County of Orange, in any litigation arising out of this Agreement. The prevailing party in any such action shall recover all fees and costs incurred in the action as well as its attorney's fees.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to conflict of laws principles.
11. **Severability.** If any provision of this Agreement is prohibited by or invalid under any statute or regulation, such provision shall be ineffective and deemed deleted herefrom to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.
12. **Amendment and Termination.** No amendment, modification, termination or cancellation of this Agreement shall be effective unless in writing signed by both parties hereto.
13. **Merger and Integration.** This Agreement expressly supersedes all prior and contemporaneous written and oral agreements and understandings between the parties and is intended to be the sole and only agreement by and between the parties with respect to the subject matter herein set forth. There are no representations or warranties made by any party to induce any other party to execute this Agreement not set forth herein.
14. **Waiver and Modification.** No provisions hereof may be waived unless in writing and signed by the party benefited by the waiver. Waiver of any one provision herein shall not be deemed to be a waiver of any other provisions herein. This Agreement may be modified or amended only by written agreement executed by all of the parties.
15. **Consultation of Counsel.** Each of the parties to this Agreement warrants and represents and affirmatively states that it has carefully read and understands the terms of this Agreement and that it has not relied upon the representations or advice of any other party hereto or attorney not its own. This Agreement and the terms and conditions thereof were determined by arms-length negotiations by, between and among the parties to this Agreement, and all the parties hereto acknowledge that they have been fully advised by their respective counsel.
16. **Power to Execute.** All parties represent and warrant that they have complete authority, right and power to enter into and execute this Agreement executed in connection herewith.
17. **Counterparts.** This Agreement may be executed in any number of counterparts, and/or transmitted by facsimile or email, and each such counterpart shall be deemed to be an original.
18. **Binding Effect On Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.
19. **Claim Rights.** The parties represent and warrant that they own, have retained and/or have the rights to settle and release the claims herein.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the FDIC and Impac have caused this Agreement to be duly executed as of the date first above written.

**FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR INDYMAC BANK, F.S.B.**

(b)(6)

By:

[Redacted Signature]

(Signature)

Richard S. Gill

(Typed Name)

Title: Counsel

IMPAC FUNDING CORPORATION

(b)(4),(b)(6)

By:

[Redacted Signature]

Stephen Wichmann

(Typed Name)

Title: Assoc. Gen Counsel

EXHIBIT A
PAYMENT SCHEDULE

PAYMENT DUE DATE	AMOUNT
May 28, 2010	\$1,500,000.00
June 28, 2010	\$116,666.67
July 28, 2010	\$116,666.67
August 28, 2010	\$116,666.67
September 28, 2010	\$116,666.67
October 28, 2010	\$116,666.67
November 28, 2010	\$116,666.67
December 28, 2010	\$116,666.67
January 28, 2011	\$116,666.67
February 28, 2011	\$116,666.67
March 28, 2011	\$116,666.67
April 28, 2011	\$116,666.67
May 28, 2011	\$116,666.67
June 28, 2011	\$116,666.67
July 28, 2011	\$116,666.67
August 28, 2011	\$116,666.67
September 28, 2011	\$116,666.67
October 28, 2011	\$116,666.67
November 28, 2011	\$116,666.61