SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for La Jolla Bank, FSB ("FDIC-R"), and Richard K. Colbourne, Rick F. Hall, and Martin Rodriguez (collectively the "Settling Defendants") (individually, the FDIC-R and the Settling Defendants may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to February 19, 2010, La Jolla Bank, FSB ("Bank") was a depository institution organized and existing under the laws of the United States.

On February 19, 2010, the Office of Thrift Supervision closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank's claims, demands, and causes of action against its former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank.

As part of the receivership of the Bank, Settling Defendants made claims on the FDIC-R for amounts allegedly due to them from the Bank prior to closing. FDIC-R issued receivership certificates to Settling Defendants in the following amounts: Richard K. Colbourne (Claim No. (b)(4),(b)(6) [redacted]), Rick F. Hall (Claim No. [redacted]), and Martin Rodriguez (b)(4),(b)(6) (Claim No. [redacted]) (collectively, the "Receivership Certificates").

On February 13, 2013, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom served at various times as a director and/or officer of the

Bank. Those claims for damages are now pending in the United States District Court for the Southern District of California in *FDIC as Receiver for La Jolla Bank v. Colbourne, et al.*, Case No. 13-cv-0351 ("D&O Action"). The Settling Defendants have denied liability in the D&O Action.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the Parties' execution and delivery of this Agreement to all other Parties, and FDIC-R's delivery of wiring instructions to Settling Defendants (the "Settlement Payment Date"), the sum of One Million Two Hundred Thousand Dollars ($1,200,000) ("Settlement Payment") shall be paid by or on behalf of the Settling Defendants to the FDIC-R as set forth below, and the Settling Defendants agree to assign to the FDIC-R all of their Receivership Certificates.

B. The Settlement Payment shall be delivered to the FDIC-R by direct wire transfer into an account designated by FDIC-R in wiring instructions to be delivered along with the executed Agreement. In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the Settlement Payment Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Settlement Payment Date until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the Settlement Payment Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

(b)(6)

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in United States District Court for the Southern District of California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants further agree to waive any defense based on any statute of limitations that were unavailable to bar any of the FDIC-R's claims as of the date this Agreement was fully executed, and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the D&O Action.

(b)(6)

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

The Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, insurers, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

B. The Settling Defendants' Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, insurers, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

(b)(6) [redacted]

a. Against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or

(b)(6) [redacted]

indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et. seq.*, if appropriate.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

Notwithstanding any aspect of this provision or the Agreement, and effective on the Payment Date, Settling Defendants hereby assign all of their Receivership Certificates to the FDIC-R. Defendants agree to complete all documents necessary to effectuate this assignment. Furthermore, to the extent, if any, that Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of

(b)(6)

the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

SECTION V: California Civil Code Section 1542

The Parties acknowledge that they are familiar with California Civil Code Section 1542, which reads that: "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 SETTLEMENT WITH THE DEBTOR."

Each of the Parties acknowledges that such Party may have sustained damages in connection with the Claims that are presently unknown and unsuspected, and that such damages as the Party may have sustained in connection with the Claims might give rise to additional damages in the future. Nevertheless, each of the Parties acknowledges that this Agreement has been negotiated and agreed upon in light of such possible damages and each Party expressly waives any and all rights under California Civil Code Section 1542 and under any other federal or state statute or law of similar effect in connection with the Claims. Each Party acknowledges and agrees that this waiver is an essential and material term of this Agreement, and that, without such waiver, this Agreement would not have been entered.

SECTION VI: Representations and Acknowledgements

A. <u>Authorized Signatories</u>. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

(b)(6)

B. Advice of Counsel. Each Party hereby acknowledges that he or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or its counsel.

C. Financial Disclosure Representation. Each Settling Defendant has submitted financial information to the FDIC-R including verified personal financial statements and herein affirms that his financial information is true and accurate as of the date of this agreement. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants.

D. Non-Assignment. The Parties hereby represent and warrant that they have not transferred, assigned, or otherwise compromised any claims, demands, obligations, damages, actions, and causes of action arising from or related to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank or the causes of action alleged in the D&O Action.

SECTION VII: Reasonable Cooperation

The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the D&O Action and to otherwise perform the terms of this Agreement.

SECTION VIII: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

(b)(6)

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of California.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:	Bryce Quine, Counsel Federal Deposit Insurance Corporation 1601 Bryan Street Dallas, TX 75201 (b)(6) [redacted] (972) 761-8520
If to the Settling Defendants:	Michael L. Kirby Kirby Noonan Lance & Hoge LLP 350 Tenth Avenue, Suite 1300 San Diego, CA 92101-8700 (b)(6) [redacted] (619) 231-8666 (Attorney for Mr. Colbourne)
	Patrick M. McAdam Iverson, Yoakum, Papiano & Hatch 633 West Fifth Street, 64th Floor Los Angeles, CA 90071 (b)(6) [redacted] (213) 624-7444 (Attorney for Mr. Rodriguez)

(b)(6) [redacted]

Reg A. Vitek
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101-8177
(b)(6) [redacted]
(619) 685-3003
(Attorney for Mr. Hall)

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

(b)(6) [redacted]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR LA JOLLA BANK, FSB

(b)(6) [redacted]

Date: 5/7/15

By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

(b)(6) [redacted]

Date: 5/13/15

Richard K. Colbourne

(b)(6) [redacted]

Date: 5-13-15

Kick F. Hall

Date: ________

____
Martin Rodriguez

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR LA JOLLA BANK, FSB

Date: ___________

____
By: Bryce Quine
Title: Counsel, Legal Division

SETTLING DEFENDANTS:

Date: ___________

____
Richard K. Colbourne

Date: ___________

____
Rick F. Hall

(b)(6)

Date: May 13, 2015

[redacted]
____
Martin Rodriguez

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for LA JOLLA BANK, FSB,

Plaintiff,

v.

RICHARD K. COLBOURNE, RICK F. HALL, and MARTIN RODRIGUEZ,

Defendants.

CASE NO.: 13cv00351 GPC (JLB)

[PROPOSED] ORDER GRANTING JOINT MOTION TO DISMISS WITH PREJUDICE

The Court hereby GRANTS the Joint Motion to Dismiss With Prejudice all Claims between Plaintiff and Defendants. All pending claims asserted in this action are dismissed with prejudice. Each party shall bear its own costs, expenses and attorney's fees.

DATED:

Honorable Gonzalo P. Curiel