

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of this ~~7~~ day of March, 2013, by, between, and among the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. ("FDIC-R"), on the one hand; and Ultra Escrow, Inc. ("Ultra Escrow"), Jeffrey McIndoo (a.k.a. Jeff McIndoo), and Cathy McIndoo, on the other hand. (Individually, the FDIC-R, Ultra Escrow, Jeffrey McIndoo, and Cathy McIndoo may be referred to herein as a "Party," and collectively as the "Parties.")

**WHEREAS:**

Prior to July 11, 2008, IndyMac Bank, F.S.B. ("Bank"), was a depository institution organized and existing under the laws of the United States.

On July 11, 2008, the Office of Thrift Supervision closed the Bank and appointed the Federal Deposit Insurance Corporation as its 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.

On or about August 30, 2007, Bank funded two mortgage loans to borrower [redacted] in the collective amount of \$598,500 [redacted] in connection with [redacted] refinance of a residential property located at [redacted] [redacted] (hereinafter the "[redacted]").

Ultra Escrow served as the escrow company and settlement agent with respect to the Loans and the Transactions.

On or about July 7, 2011, FDIC-R filed an action against Ultra Escrow in the United States District Court for the Central District of California, Case No. SACV 11-01012-AG-MLG (the "District Court Action"), alleging that Ultra Escrow caused damages to the FDIC-R.

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A dispute has arisen between the Parties with respect to claims by the FDIC-R related to Ultra Escrow's actions as alleged in the District Court Action (hereinafter any and all claims by the FDIC-R against Ultra Escrow related to allegations made in the District Court Action are referred to as the "Claims"). Ultra Escrow denies, in their entirety, the Claims made in the District Court Action against Ultra Escrow. The Parties engaged in settlement negotiations as a result of the Claims. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation, and Jeffrey McIndoo, and Cathy McIndoo (collectively referred to as the "McIndoos") join in this agreement and stipulate to jurisdiction of the Court in this Action to enforce the terms of the written guaranty provided for herein.

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, Ultra Escrow shall pay the FDIC-R the total sum of One Hundred Thousand Dollars (\$100,000) (the "Settlement Payment"). Ultra Escrow shall satisfy its payment obligation by rendering installment payments as follows: a) thirty-five payments in the amount of Two Thousand Five Hundred Dollars (\$2,500) each, with the first payment to be made on or before May 1, 2013, and the subsequent payments to be made on the first of the month thereafter for the next thirty-four months; b) a final payment, in the amount of Twelve Thousand Five Hundred Dollars (\$12,500), to be paid made on or before April 1, 2016. Each payment provided for in this paragraph shall be made in the form of a settlement draft, made payable to "Mortgage Recovery Law Group Client Trust

Account.” The payment shall be delivered to Paul Levin, Mortgage Recovery Law Group, 700 North Brand Avenue, Suite 830, Glendale, California 91203.

B. If the FDIC-R does not receive the Settlement Payment in full within the timeframe determined by subparagraph A above (“Settlement Payment Due Date”), then the FDIC-R, in its sole discretion, shall have the right to:

1. extend the period of time for payment, including interest accruing from the Settlement Payment Due Date through the date of payment at a rate calculated in accordance with 26 U.S.C. §6621(b)(3); or

2. enforce this Agreement as provided in Section I.D herein and, in such event, Ultra Escrow agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R’s reasonable attorney’s fees and costs expended in enforcing the terms of this Agreement; and/or

3. seek any other relief available to it in law or equity.

Any extension of time for delivery of the Settlement Payment shall not prejudice the FDIC-R’s other rights to take other action or seek any relief during or after such period of extension, including the right to bring an action to enforce the Agreement.

C. The McIndoos further agree that they will provide a personal guaranty, assuring payment of the Settlement Payment up to the first Fifty Thousand Dollars (\$50,000) owed under this Settlement Agreement. Should Ultra Escrow fail to make timely payments on the first Fifty Thousand Dollars (\$50,000) owed, the McIndoos agree to be held personally and financially responsible to the FDIC-R for Fifty Thousand Dollars (\$50,000) less any amounts timely paid by Ultra Escrow, as provided in the Agreement of Guaranty (“Guaranty”) attached hereto as Exhibit A.

D. In addition, if the FDIC-R does not receive the Settlement Payment in full on or before the dates determined by subparagraph A above, then the FDIC-R, in its sole discretion, shall also have the right to enforce a stipulated judgment against Ultra Escrow in the amount of One Hundred Thousand Dollars (\$100,000), less any amount paid by Ultra Escrow to FDIC-R pursuant to this Settlement Agreement and the Guaranty. In the instance that the FDIC-R pursues a stipulated judgment against Ultra Escrow for Ultra Escrow's failure to fully and timely pay in full the Settlement Payment, Ultra Escrow agrees not to oppose the entry or enforcement of the stipulated judgment and further agree to compensate the FDIC-R for all costs, fees, and other expenses incurred in entering and enforcing this stipulated judgment. The FDIC-R agrees not to file any stipulated judgment against Ultra Escrow without first providing Ultra Escrow with notice of non-payment and allowing Ultra Escrow fifteen (15) days from the date such notice is sent to cure non-payment. Any obligations by the FDIC-R to provide notice of non-payment will be satisfied by delivering notice of non-payment via electronic mail and overnight mail to Ultra Escrow's counsel, who is designated as Robert C. Moest, 2530 Wilshire Boulevard, 2<sup>nd</sup> Floor, Santa Monica California 90403; [REDACTED]

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E. Concurrently with the execution of this Agreement, Ultra Escrow shall execute and deliver to the FDIC-R a Stipulation for Entry of Judgment in the amount of One Hundred Thousand Dollars (\$100,000.00) (hereinafter the "Judgment Amount") in the form attached hereto marked Exhibit B and Consent to Entry of Judgment in the form attached hereto marked Exhibit C and on the terms provided for therein. In the event the FDIC-R requests to have Judgment entered, pursuant to Section I.D. of this Agreement, the Court shall award the FDIC-R, upon motion, an award of attorney fees and costs incurred by the FDIC-R in prosecution of such judgment in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000).

F. Both the Stipulation for Entry of Judgment and Consent to Entry of Judgment are incorporated by reference herein and their terms are made a part of this Settlement Agreement. The Stipulation for Entry of Judgment and the Consent to Entry of Judgment shall be held in trust by the FDIC-R's attorneys of record, shall not be filed with the Court and not be used to seek entry of judgment thereon except as provided for in Section I.D. of this Agreement.

G. Unless otherwise indicated in this Agreement, the Parties shall bear their own costs and attorneys' fees incurred in the Action and the preparation of this Settlement Agreement.

#### **SECTION II: Releases.**

Each Party acknowledges that this Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against another Party arising from the Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

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 Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those damages.

Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment in full, and except as provided in Section II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Ultra Escrow and its respective employees, officers, directors, representatives, "heirs," executors, administrators, attorneys, successors and assigns, including the McIndoos, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to the FDIC-R, arising out of or relating to the facts and circumstances alleged by the Claims .

B. Ultra Escrow's and the McIndoos' Release.

Ultra Escrow and the McIndoos, on behalf of themselves and their respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Ultra Escrow and/or the McIndoos, arising out of or relating to the facts and circumstances alleged by the Claims.

C. Exceptions to Release by FDIC-R.

I. 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:

a. against Ultra Escrow, the McIndoos, or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC-R as successor in interest to any person or entity other than Bank;

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

c. which are not expressly released in Section II.A. above.

2. Notwithstanding any other provision of this Agreement, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority to institute administrative enforcement or other proceedings seeking removal, prohibition, civil penalties, restitution or other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person, or which may arise by operation of law, rule, or regulation.

3. Notwithstanding any other provision of this Agreement, this Agreement does not waive any claims which could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

D. Dismissal.

Unless dismissal is required sooner by the Court presiding over the District Court Action, upon the FDIC-R's counsel's receipt of the entire Settlement Payment, the FDIC-R shall file a

stipulation for dismissal of the District Court Action with prejudice as to Ultra Escrow, and each Party shall bear their own costs and fees. The Parties shall cooperate with the FDIC-R to accomplish such stipulation for dismissal.

E. No Subrogation.

Unless a default shall occur, the FDIC-R shall have no right to the proceeds of any recovery, subrogation, offset, demand, or claim to any moneys, judgments, or settlements that Ultra Escrow may recover against any third-party defendants.

**SECTION III: Insolvency.**

A. Insolvency.

Ultra Escrow warrants as to payments made by or on its behalf that at the time of such payment, Ultra Escrow is not insolvent nor will the payment made by or on its behalf render it insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by Ultra Escrow and not by its counsel.

B. Preferences.

In the event that the FDIC-R is required to return any portion of the Settlement Payment due to a final order by a court that the transfer of the Settlement Payment or any portion thereof constituted a preference, voidable preference, fraudulent transfer or similar transaction, then, in its sole discretion, the FDIC-R may, without waiver of any other rights it may have in law or equity, pursue any of the rights and remedies set forth in Section I.B. and/or I.C. above, and/or otherwise permitted by law.

**SECTION IV: Notices.**

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



If to the FDIC-R:

Paul Levin  
Mortgage Recovery Law Group  
700 North Brand Boulevard, Suite 830  
Glendale, California 91203  
(818) 630-7900

If to Ultra Escrow:

Robert C. Moest  
Law Offices of Robert C. Moest  
2530 Wilshire Boulevard, 2<sup>nd</sup> Floor  
Santa Monica California 90403  
(310) 915-6628

**SECTION V: 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 hereto, except to enforce its terms.

B. Execution in Counterparts.

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

C. Binding Effect.

All of the undersigned persons represent and warrant that they are a Party 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, administrators, representatives, attorneys, successors and assigns.

D. Entire Agreement.

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. No representations, warranties or inducements have been made to or relied on by any Party concerning this Agreement and its exhibits other than those contained therein.

E. Amendments.

This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing by the Party or Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Reasonable Cooperation.

1. The undersigned 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 perform the terms of this Agreement.

2. Further, Ultra Escrow and the McIndoos agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out-of-pocket costs is subject to reasonable reimbursement by the FDIC-R.

pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all non-privileged documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;

b. making themselves available upon request by the FDIC-R at reasonable times and places for interviews regarding non-privileged facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;

c. appearing to testify regarding non-privileged information, upon request by the FDIC-R, in any matter determined by the FDIC-R in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC-R, regarding any non-privileged matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

G. Choice of Law.

This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the, internal laws of the State of California, without regard to its conflicts of laws.

H. 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.

I. Title and Captions.

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

J. Authorship/Construction.

This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any party by reason of which party drafted it.

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.

DATE: 3/26/2013  
APPROVED AS TO FORM

LAW OFFICES OF ROBERT C. MOEST

By:

ROBERT C. MOEST  
Attorney for Defendant ULTRA ESCROW,  
INC.

(b)(6)

DATE: 3/22/2013

ULTRA ESCROW, INC., a Nevada

[Redacted Signature]

Signature

JEFFREY MCINDOO PRESIDENT  
Print Name and Title

(b)(6)

(b)(6)

DATE: 3/22/2013

JEFFREY MCINDOO aka JEFF MCINDOO

[Redacted Signature]

Signature

CATHY MCINDOO

(b)(6)

DATE:

By:

[Redacted Signature]

DATE: 3/27/13  
APPROVED AS TO FORM

\_\_\_\_\_  
*Signature*

(b)(6)

SNIPPER, WAINER & MARKOFF

By:

MAURICE WAINER  
Attorney for Plaintiff FEDERAL DEPOSIT  
INSURANCE CORPORATION as Receiver  
of INDYMAC BANK, F.S.B.

DATE: 3/26/2013

FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver of INDYMAC  
BANK, F.S.B.

(b)(6)

By:

\_\_\_\_\_  
*Signature*

Richard S. Bill, Counsel  
*Print Name and Title*