

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) with an effective date of February 22, 2013 (“Effective Date”), by, between, and among the following Parties: the Plaintiff Federal Deposit Insurance Corporation in its capacity as receiver for NetBank, FSB (“FDIC”), and Samuel Gbililia (“Gbililia”), individually and Golden Key Realty & Mortgage Banker, Inc., a California Corporation (“Golden Key”), jointly and severally (collectively the “Settling Defendants”) (individually, the FDIC and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to September 27, 2007, NetBank (“Bank”) was a depository institution organized and existing under the laws of Alpharetta, Georgia. Pursuant to Order No. 2007-43, issued by the Office of Thrift Supervision on September 27, 2007, the FDIC was appointed Receiver of NetBank. On September 28, 2007, the FDIC accepted its appointment as Receiver of NetBank in accordance with the Federal Deposit Insurance Act, as amended, by Receiver-In-Charge, Robert Schoppe. On the same date, NetBank's bank charter was pulled and all assets were placed in an FDIC Receivership. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver 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 as receiver succeeded was the subject matter of this case because, as Receiver of NetBank and by express operation of law, FDIC-Receiver assumes all rights, titles, powers, privileges, and operations of NetBank. *See* 12 U.S.C. § 1821(d)(2). As Receiver and upon assumption of all of NetBank's operations, FDIC-Receiver essentially stands in NetBank's shoes and operates as its successor. *Id.* § 1821(d)(2)(B). Accordingly these rights include NetBank's choses in action against all parties in the captioned case.

On September 22, 2010, the FDIC filed a complaint for money damages against certain

persons, including the Settling Defendants, who were involved in a series of loan transactions brokered by Golden Key. Those claims for damages are now pending in the United States District Court for the Northern District of California, Oakland Division, Case: 3:10-cv-04285-WHA for a mortgage loan recovery action ("MLR Action"). The Settling Defendants failed to plead or otherwise defend and Plaintiff is entitled to judgment. The only matter pending before the Court at this time is a Motion for Default Judgment filed by the FDIC seeking damages in the amount of \$2,020,810.00.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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 Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC

- 1) The general terms of settlement regarding the Parties are identified as follows:
 - a) As an essential covenant and condition to this Agreement, the Settling Defendants and the FDIC agree to enter into a joint motion for consent judgment ("Consent Judgment") against Settling Defendants in the amount of one million two hundred and fifty thousand dollars (\$1,250,000.00), plus interest thereon from the date of the execution of this Agreement through the date the judgment is fully satisfied, at the rate of one year U.S. Treasury bills as reported in the Wall Street Journal at the end of the last quarter immediately preceding the date of this Agreement. The motion for consent judgment shall be filed immediately upon the execution of the Settlement Agreement.
 - b) Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, Settling Defendants will tender payment of fifty thousand dollars (\$50,000.00), payable by consecutive monthly payments of three hundred dollars (\$300) per month, until amount is paid in full. The

first monthly payment will be due by April 30, 2013, and shall be due each succeeding month on the last day of each month until the amount is paid in full. All funds due under this Agreement are called collectively, "Settlement Funds."

- c) Unless specifically otherwise noted in this Agreement, upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than April 30, 2013, the first payment Settlement Funds, and each succeeding payment shall be delivered to FDIC by direct wire transfer into an account designated by FDIC or by certified or cashier's check drawn upon a depository institution acceptable to FDIC or to The Rudow Law Group, LLC.
- d) The FDIC agrees to forebear from executing on the Consent Judgment as long as the Settling Defendants timely tender Settlement Funds as stated above. The FDIC has the right to initiate post judgment discovery and post judgment remedies against Settling Defendants and their property immediately upon failure to make timely payments as stated above.
- e) If Settling Defendants should file for relief under any chapter of the Bankruptcy Code, the debt evidenced by this agreement shall be deemed non-dischargeable and presentation of this Settlement Agreement shall be *prima facie* and irrefutable evidence of said non-dischargeability.

SECTION II: Satisfaction of Judgment

Upon timely receipt of all the Settlement Funds, the FDIC shall file with the Court a Satisfaction of Judgment.

SECTION III: Releases

1) Release of Individual Settling Defendants by FDIC.

Effective upon payment of all of the Settlement Funds and Satisfaction of Judgment in SECTION(S) I and II above, and except as provided in PARAGRAPH 4) and SECTION IV

below, the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, 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, belonging to the FDIC, that arise from or relate to the acts pled in the MLR Action complaint, as amended or the defense of the same.

2) Release of FDIC by the Settling Defendants.

Effective simultaneously with the release granted in PARAGRAPH III.1). above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC, 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 acts pled in the MLR Action complaint, as amended arise from or relate to MLR Action or the prosecution of the same.

3) Release by Settling Defendants of All Defendants in MLR Action Who Have Settled With The FDIC.

Effective simultaneously with the releases granted in Paragraph III.2). above, the Settling Defendants, and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge all Defendants in the MLR Action who have settled with the FDIC 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 acts pled in the MLR Action complaint, as amended arise from or relate to MLR Action or the defense of the same.

4) Express Reservations From Releases By FDIC.

- a) Notwithstanding any other provision, by 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 or causes of action:

- i) 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 indebtedness payable or owed by them to FDIC, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank;
 - ii) against any person or entity not expressly released in this Agreement; and which are not expressly released in Paragraph III.1), above.
- b) Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.
- c) Notwithstanding any other provision, 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, the United States Attorney's Office for the State of California, Northern District, or any other federal judicial district. In addition, the FDIC 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., and presently intends to enforce this right expressly seeking a restitution order for all damages that the FDIC suffered in the MLR Action. The Settling Defendants retain the right to oppose any effort to seek restitution.

SECTION IV: Waiver of Dividends

To the extent, if any, that Settling Defendants are or were shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other pro rata distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the

FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

SECTION V: Representations and Acknowledgements

- 1) Intentionally Left Blank.
- 2) 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 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.
- 3) Binding Effect. Each of the undersigned persons represents and warrants 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 Parties and their respective heirs, executors, administrators, representatives, successors and assigns.
- 4) 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.
- 5) Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).
- 6) Specific Representations Warranties and Disclaimer. The Parties expressly acknowledge that in determining to settle the claims released here, the FDIC has reasonably and justifiably relied upon the accuracy of financial information submitted. If, in their disclosures, the Parties have failed to disclose any interest, legal, equitable, or beneficial, in any asset, or if the Party was involved with the fraudulent conveyance of any assets valued at over \$2,500.00

within three (3) years of the Effective Date of this Agreement, the Parties agree to cooperate fully with the FDIC to transfer their interest in the asset to the FDIC and to sign any and all documents necessary to transfer their interest in the asset to the FDIC. Moreover, if, in their disclosures the Parties have failed to disclose any interest, legal, equitable, or beneficial, in any asset, the FDIC in its sole discretion, may exercise one or more or all of the following remedies: (a) the FDIC may declare the releases granted to the Parties as null and void; (b) the FDIC may retain the Settlement Funds; (c) the FDIC may sue the Parties for damages, an injunction, and specific performance for the breach of this agreement; and (d) the FDIC may seek to vacate any Satisfaction of Judgment and reinstate the FDIC's claims against the Parties. The Parties agree that if, in their disclosures, they have failed to disclose any interest, legal, equitable, or beneficial, in any asset, the Parties consent to the reinstatement of FDIC's claims and waive any statute of limitations that would bar any of the FDIC's claims against them.

7) Reasonable Cooperation.

- a) 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 MLR Action as to the Settling Parties and to otherwise perform the terms of this Agreement.
- b) Further, the Settling Defendants agree to cooperate fully with the FDIC in connection with any action required under this Agreement, including without limitation, the FDIC's further prosecution of the MLR Action. Any such cooperation that involves any out of pocket costs will not be subject to any reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:
 - i) producing all documents requested by the FDIC, without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to the Bank;
 - ii) making themselves available upon request by the FDIC at reasonable times and

places for interviews regarding facts, as determined by the FDIC in its sole discretion, to be relevant to the Bank;

iii) appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to the Bank, without the necessity of subpoena; and

iv) signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC in its sole discretion, to be relevant to the Bank.

- 8) Advice of Counsel. Each Party hereby acknowledges that 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 her counsel.
- 9) FDIC Agreement Enforcement. The FDIC may use specific performance to enforce this agreement and all disputes arising from or related to this Agreement shall be brought before Judge William Alsup, at the courts discretion.
- 10) Legal Fees. The FDIC shall be entitled to actual legal fees in a successful action to enforce its rights under this Agreement.

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.

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(b)(6)

[Redacted Signature]

Witness

[Redacted Signature]

ROBERT J. DENENZEI, JR., Counsel, Legal Division,
FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(6)(6)

[Redacted Signature]

Witness

[Redacted Signature]

Samuel Gbilias, Individually

(b)(6)(6)

[Redacted Signature]

Witness

[Redacted Signature]

Samuel Gbilias, President, Golden Key Realty & Mortgage Banker, Inc.