

SETTLEMENT AND RELEASE AGREEMENT

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

Financial Freedom Senior Funding Corporation (“FFSFC”); and Certain Underwriters at Lloyd’s of London (the “Settling Party”) (individually, the FFSFC and the Settling Party may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

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

FFSFC was a wholly owned subsidiary of the Bank;

On July 11, 2008, 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.

FFSFC brought suit against, *inter alia*, the Settling Party’s alleged insured, Robert Fonte, in the United States District Court for the Eastern District of New York in *Financial Freedom Senior Funding Corp. v. Robert Fonte, et al.*, Case No. 07-cv-3591 (the “Action”), and the Settling Party denied coverage;

On or about February 15, 2013, the Settling Party’s insured became obligated to pay Financial Freedom Funding Corporation \$395,000 pursuant to a settlement agreement terminating the Action against him and assigning his claims against the Settling Party.

FFSFC subsequently demanded the Settling Party pay its alleged insured’s \$395,000 Judgment, and the Settling Party denied coverage or liability for any monies owed on behalf of its insured. (hereinafter referred to as the “Dispute”)

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

A. As an essential covenant and condition to this Agreement, the Settling Party agrees to pay the FFSFC the sum of seventy-five thousand dollars (\$75,000.00) (“the Settlement Payment”), to be paid on or before seventy-five (75) calendar days following the date the FFSFC executes this Agreement and the Settling Party’s counsel receives the executed Agreement.

B. The Settling Party shall deliver the Settlement Payment to the FFSFC by certified or cashier’s check drawn upon a depository institution acceptable to FFSFC and deliverable to Eric Weinstein, counsel of record for FFSFC.

C. If the FFSFC does not receive the Settlement Payment in full on or before the dates determined by subsection A above, the FFSFC, 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:

1. Extend the period of time for the Settlement Payment, including interest accruing from the dates 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 Party agrees to jurisdiction in United States District Court for the Eastern District of New York and to pay all of the FFSFC’s reasonable attorney’s fees and costs expended in enforcing the terms of this Agreement; or

3. 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 FFSFC’s rights to take any of the actions set forth in Section I.C.2 through I.C.3 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. The FFSFC's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.C, the FFSFC and its successors and assigns, hereby releases and discharges the Settling Party and its heirs, executors, trustees, 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, the FFSFC, that arise from the Dispute or any claims that were asserted or could have been asserted by Fonte or related to the Dispute.

B. The Settling Party's Releases.

Effective simultaneously with the release granted in Section III.A. above, the Settling Party, on behalf of itself and its heirs, executors, trustees, administrators, representatives, successors, and assigns, hereby releases and discharges the FFSFC, and their employees, officers, directors, representatives, attorneys, 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 any claims that were asserted or could have been asserted in the Dispute.

C. Exceptions from Releases by FFSFC.

1. Notwithstanding any other provision of this Agreement, the FFSFC 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 the Settling Party 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 FFSFC, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FFSFC 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 FFSFC 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 FFSFC 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 III: Representations and Acknowledgements

A. Authorized Signatories. 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. Advice of Counsel. Each Party hereby acknowledges that he, she, 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 her counsel.

SECTION IV: 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 Action and to otherwise perform the terms of this Agreement.

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 except to enforce its terms.

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 New York, without regard to its choice of law provisions.

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 FFSFC: Paul Levin; Mortgage Recovery Law Group, 700 N. Brand Blvd., Suite 830, Glendale, CA 91203; Telephone: (818) 630-7900; Email: [REDACTED]

(b)(6)

If to the Settling Party: James Walsh; London Fischer LLP, 59 Maiden Lane, New York, New York 10038; Telephone (212) 972-1000; Email: [REDACTED]

(b)(6)

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.

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.

FINANCIAL FREEDOM SENIOR FUNDING CORPORATION

(b)(6)

Date: 2/15/2019

BY:

[Redacted Signature]

TITLE:

Counsel

PRINT NAME:

John V. Church

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON

(b)(6)

Date: 17/4/2019

BY:

[Redacted Signature]

TITLE:

CLAIMS MANAGER

PRINT NAME:

MISHA NATEG#7