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DIF/Mortgage Fraud

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into and made effective as of the ____ day of November, 2008 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Conservator for INDYMAC FEDERAL BANK, F.S.B. formerly known as INDYMAC BANK, F.S.B. (hereinafter "INDYMAC") and CALLISTO GROUP, INC., a California corporation; CALLISTO GROUP, INC. dba METRO LENDING SERVICES (hereinafter collectively "CALLISTO") and IRMA AVAKIAN ("AVAKIAN"). INDYMAC, and CALLISTO and AVAKIAN may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

(b)(2) [Redacted]

1. RECITALS

1.1 Prior to August 11, 2004, INDYMAC and CALLISTO entered into a business relationship governed by a written Seller Contract and e-MITS User Agreement (hereinafter "Agreement").

1.2 CALLISTO sold to INDYMAC the following loans identified by borrower name, loan number(s), principal amount(s) and address pursuant to the Agreement:

(b)(6) [Redacted] Duque (loan nos. [Redacted]) in the principal amounts of \$ 412,000 and \$ 103,000, secured by real property located at [Redacted] San Fernando, California. (b)(6)

(b)(6) [Redacted] Kalayidzhyan (loan nos. [Redacted]) in the principal amounts of \$ 488,000 and \$ 122,000 secured by real property located at [Redacted] Street, Tujunga, California. (b)(6)

(b)(6) [Redacted] Markosyan (loan nos. [Redacted]) in the principle amounts of \$ 412,000 and \$103,000 secured by property located at [Redacted] Burbank, California. (b)(6)

(b)(6) [Redacted] Merino (loan nos. [Redacted]) in the principal amount of \$ 448,000 secured by real property located at [Redacted] Santa Ana, California.

(b)(6) [Redacted] Atakhanian (loan no. [Redacted]) in the principal amount of \$ 133,700 secured by the real property located at [Redacted] Glendale, California.

(b)(6) [Redacted] Deleon (loan no. [Redacted]) in the principal amount of \$ 500,000 secured by real property located at [Redacted] Grenada Hills, California.

(b)(6)

1.3 INDYMAC claims that CALLISTO and AVAKIAN as the mortgage broker of record breached their duty owed to INDYMAC and CALLISTO breached certain representations and warranties contained in the Agreement with respect to the above-referenced loans hereinafter referred to as the "SUBJECT LOANS". INDYMAC demanded CALLISTO repurchase the SUBJECT LOANS and/or indemnify INDYMAC for its losses.

1.4 INDYMAC has also demanded payment for certain alleged documentation fees (the "DOCUMENT FEES") associated with the SUBJECT LOANS and other loans processed, packaged, and/or sold by CALLISTO to INDYMAC.

1.5 CALLISTO and AVAKIAN dispute INDYMAC's claims relating to the SUBJECT LOANS, and refused to repurchase the loans and/or indemnify INDYMAC for its alleged losses. Specifically, and without limitation, CALLISTO and AVAKIAN deny that they owed a duty of care to INDYMAC, that any duty owed was breached, and that they breached any representations and warranties made. CALLISTO and AVAKIAN further allege that any losses suffered by INDYMAC were not caused by any act or omission by CALLISTO and/or AVAKIAN.

1.6 On or about December 11, 2007, INDYMAC filed a lawsuit entitled *INDYMAC BANK, FSB v. CALLISTO GROUP, INC., a California corporation; CALLISTO GROUP, INC., dba METRO LENDING SERVICES; IRMA AVAKIAN, an individual, and DOES 1-50, inclusive*; Case No. BC382072. A First Amended Complaint was filed on June 16, 2008 (hereinafter "Action").

1.7 The Parties desire and have agreed to settle all claims relating to the SUBJECT LOANS at issue in the Action.

2. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

2.1 **Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

2.2 **Payment to INDYMAC.** Payment of Two Hundred Sixty Five Thousand Dollars and no/cents (\$265,000.00) (the "Settlement Funds") shall be paid on behalf of CALLISTO and AVAKIAN to INDYMAC.

a. Of the Settlement Funds, the initial payment (the "Initial Payment") shall be \$200,000.00. Of the Initial Payment, \$125,747.32 currently held by

INDYMAC shall be applied towards the Initial Payment. \$74,252.68 of the Initial Payment shall be paid by check payable to INDYMAC FEDERAL BANK, F.S.B. and transmitted to INDYMAC c/o Vanessa H. Widener, Esq., Anderson, McPharlin & Connors LLP, 444 South Flower Street, 31st Floor, Los Angeles, CA 90071-2901, within 5 days that CALLISTO receives payment from its insurer, but in no event later than November 17, 2008.

b. The remaining Sixty Five Thousand Dollars (\$65,000.00) shall be paid as follows: \$5,146.66 per month commencing December 1, 2008 and continuing on the first of each month until paid in full. The monthly payments shall be made by check payable to INDYMAC FEDERAL BANK, FSB and transmitted to INDYMAC c/o Vanessa H. Widener, Esq., Anderson, McPharlin & Connors LLP, 444 South Flower Street, 31st Floor, Los Angeles, CA 90071-2901.

2.3 Concurrently with the signing and delivery of this Settlement Agreement, CALLISTO shall execute a Stipulation for Entry of Judgment in the amount of \$65,000.00 less any amounts received by INDYMAC, in the form attached hereto as Exhibit 1. The Stipulation for Entry of Judgment incorporates by reference the Judgment (Pursuant to Stipulation), attached to the Stipulation as Exhibit A. Both the Stipulation and Judgment are incorporated by reference herein and their terms made a part of this Settlement Agreement. The Stipulation shall be entered immediately upon execution of this Settlement Agreement. The Judgment (Pursuant to Stipulation) shall not be entered so long as CALLISTO performs under the terms of this Settlement Agreement as set forth in paragraph 2.2(b) above. Entry of the Judgment in accordance with the terms of the Stipulation, and enforcement of said Judgment, shall be INDYMAC's sole recourse in the event of a default by CALLISTO in making the payments called for herein.

2.4 In the event CALLISTO defaults by failing to make a timely payment to INDYMAC as set forth in paragraphs 2.2(b) above, INDYMAC shall give written notice via mail or facsimile of the default and notice of intent to enter Judgment (Pursuant to Stipulation) to CALLISTO at: Metro Lending Services, ATTN: Vatche Yepremian, 550 North Brand Blvd., Suite 2050, Glendale, CA 91203 Fax: 818.459.0035; with a copy to: Mark S. Horoupian, SulmeyerKupetz, A Professional Corporation, 333 South Hope Street, Thirty-Fifth Floor, Los Angeles, CA 90071; Voice [redacted] Fax: [redacted]

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

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

2.5 CALLISTO shall have five (5) business days from receipt of the notice of intent to enter Judgment to cure the default. If CALLISTO fails to cure the default within five (5) business days, INDYMAC shall retain all consideration it received, and it may, in its sole discretion, seek to enter the Judgment (Pursuant to Stipulation) and enforce said Judgment against CALLISTO less any consideration already received by INDYMAC pursuant to the settlement. Judgment may be entered by ex parte application (without testimony or trial and CALLISTO further waives the right to a court and/or jury trial) with written notice given to CALLISTO and Mark Horoupian by facsimile or telephonic

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notice given at the facsimile and phone number listed above. The amount actually received by INDYMAC shall be deducted from the amount of the Judgment (Pursuant to Stipulation).

2.6 Within 5 business days of INDYMAC's counsel's receipt of the fully executed Settlement Agreement, INDYMAC's counsel shall file a request for dismissal of the entire Action with prejudice.

2.7 Each party agrees that Section 664.6 of the Code of Civil Procedure of the State of California shall apply to this Settlement Agreement and requests that the court shall retain jurisdiction over the parties to enforce this Settlement Agreement and the Judgment (Pursuant to Stipulation).

2.8 The parties shall bear their own costs and attorneys' fees.

3. **RELEASE**

3.1 **Unknown Claims.** INDYMAC, AVAKIAN and CALLISTO acknowledge and agree that the release they give to each other upon executing this Settlement 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 they may have against each other arising from or in conjunction with the SUBJECT LOANS, as well as any DOCUMENT FEES.

3.2 The Parties acknowledge and agree that CALLISTO processed, packaged and/or sold other mortgage loans to INDYMAC which are not part of the Action and that, except as to the DOCUMENT FEES, this Settlement Agreement and Release as to CALLISTO do not apply to those mortgage loans. INDYMAC expressly reserves its rights to pursue any and all claims and causes of action, except as they may related to DOCUMENT FEES, it may have in law or equity against CALLISTO arising out of any mortgage loans which are not part of the Action.

3.3 The Parties hereby expressly waive application of any applicable state statute, including but not limited to *California Civil Code §1542*. The Parties certify 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."

3.4 The Parties understand and acknowledge that the significance and consequence of its waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising from or in conjunction with the SUBJECT LOANS or any facts or circumstances related to the SUBJECT LOANS and DOCUMENT FEES, that Party will not be able to make any claim for those damages. Furthermore, each acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release relating to the SUBJECT LOANS and the DOCUMENT FEES, 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.

3.5 Except for the rights, duties, and obligations set forth in this Settlement Agreement and Stipulation for Entry of Judgment, the Parties each hereby fully, finally, and forever release and discharge the other Party, and any and all of its respective past, present, and future affiliates, employees, brokers, investors, members, partners, joint venturers, independent contractors, attorneys, insurers, agents, investors, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees and/or agents, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, employees and/or agents (hereinafter "INDYMAC AGENTS" or "CALLISTO AGENTS") of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the SUBJECT LOANS and the DOCUMENT FEES. The Parties further acknowledge and agree that neither Party will take any action or assert any claims or demands against the other Party with any federal, state, municipal, or other governmental agency or court relating to the SUBJECT LOANS and the DOCUMENT FEES.

3.6 Except for the rights, duties, and obligations set forth in this Settlement Agreement and Stipulation for Entry of Judgment, in addition to the release in paragraphs 3.4 and 3.5, INDYMAC and AVAKIAN agree to a further release of 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 they may have against each other including INDYMAC AGENTS and CALLISTO AGENTS arising from or in conjunction with any other mortgage loans which may have been processed, packaged, approved, underwritten and/or sold by CALLISTO to INDYMAC prior to the date of this Settlement Agreement. This release does not include any

mortgage loans to which AVAKIAN or CALLISTO AGENTS are parties to the transaction (i.e., buyer, seller or borrower) or any mortgage loan transactions in which there is actual fraud.

3.7 The release as to CALLISTO shall become effective upon execution of the Settlement Agreement, and the full payment of the Settlement Funds or entry of the Judgment Pursuant to Stipulation whichever occurs first.

3.8 The release as to AVAKIAN and CALLISTO AGENTS as set forth in paragraph 3.6 shall become effective upon execution of the Settlement Agreement and payment of the Initial Settlement Payment.

4. **MISCELLANEOUS**

4.1 **Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement and Stipulation for Entry of Judgment is free and voluntary.

4.2 **Confidentiality.** The Parties agree that neither they nor anyone acting on their behalf, including their respective attorneys, will disclose to anyone any information relating to, in any way, the contents or terms of this Settlement Agreement, or any matters pertaining to this settlement, including its negotiation, unless such disclosure is: (1) lawfully required by any governmental agency; (2) otherwise required by law (including legally required financial reporting or other disclosures); or (3) necessary in any legal proceeding to enforce any provision of this Settlement Agreement. The Parties may disclose the terms of this Settlement Agreement to their respective auditors, accountants, tax advisors, and legal counsel, but only to the extent required for professional advice from those sources and only after securing a commitment from those professionals to maintain the confidentiality of this Settlement Agreement, as required above, to the greatest extent possible considering the purpose for which the terms of the Settlement Agreement are needed by those professionals.

4.3 **No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

4.4 **Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

4.5 **Governing Law.** The Parties agree to submit to the Courts of the City and County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further

agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

4.6 Attorneys Fees and Costs. Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

4.7 Severability. The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

4.8 Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

4.9 Review and Understanding. The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

4.10 Approval, Authority, and Nonassignment. The Parties represent and warrant to one another that the approval of this Settlement Agreement has been undertaken in a proper and lawful manner and that they have the requisite power and authority to enter into and to perform their obligations under this Settlement Agreement, and further warrant and represent that they have not sold, assigned, granted or transferred to any other person, corporate or natural, or to any entity, any claim, action, demand, or cause of action released by this Settlement Agreement.

4.11 Number. Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

4.12 Counterparts/Execution. This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile or e-mail shall be valid and effective

for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

4.13 **Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

4.14 **Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

4.15 **Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

4.16 **Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: November 17, 2008
APPROVED AS TO FORM

SULMEYER KUPETZ

[Redacted signature box]

~~Mark S. Hecopian~~

Attorneys for Defendants, CALLISTO GROUP, INC.,
a California corporation; CALLISTO GROUP, INC.
dba METRO LENDING SERVICES; and IRMA
AVAKIAN

(b)(6)

DATED: November 14, 2008

CALLISTO GROUP, INC. and CALLISTO GROUP, INC., dba MBTRO LENDING SERVICES

By: (b)(6)

NATCHE YOSPROMIAN, Pres.
Type/Print Name and Title

DATED: November 14, 2008

By: (b)(6)
IRMA AVAKIAN

DATED: November __, 2008
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By: _____
VANESSA H. WIDENER
Attorneys for Plaintiff,
FEDERAL DEPOSIT INSURANCE CORPORATION, as Conservator for INDYMAC FEDERAL BANK, F.S.B. formerly known as INDYMAC BANK, F.S.B.

DATED: November __, 2008

FEDERAL DEPOSIT INSURANCE CORPORATION AS CONSERVATOR FOR INDYMAC FEDERAL BANK, F.S.B formerly known as INDYMAC BANK, F.S.B.

By: _____
Ignacio Gomez
Vice President

