

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into by and between The Federal Deposit Insurance Corporation, as receiver for IndyMac Federal Bank, F.S.B., ("FDIC" or "Plaintiff"), on the one hand, and Timothy W. Fenbert, an individual ("Fenbert") and Katima, Inc. ("Katima") (collectively, the "Fenbert Defendants"), on the other hand. The FDIC and the Fenbert Defendants are referred to collectively as the "Parties."

RECITALS

A. WHEREAS, the FDIC has been substituted for IndyMac Federal Bank, F.S.B. ("IndyMac") as plaintiff in the lawsuit currently pending against the Fenbert Defendants and others entitled *FDIC as Receiver for IndyMac Federal Bank, F.S.B. v. Nationwide Financial Corporation, et. al.*, in United States District Court, Northern District of Georgia, Case No. 1:07-cv-1472-CC ("Action").

B. WHEREAS, the Fenbert Defendants deny all liability for the claims alleged in the Action;

C. WHEREAS, without admitting liability, the Parties desire to resolve the FDIC's claims against the Fenbert Defendants, including, but not limited to, all issues that were raised or could have been raised by FDIC in the Action, and agree as follows:

AGREEMENT AND RELEASE

NOW, THEREFORE, in consideration of the undertakings contained in this agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble, Recitals and Exhibits. The foregoing preamble and recitals are true and correct and are integral parts of this agreement.

2. Settlement Payment by Fenbert Defendants to FDIC. In consideration of the FDIC's full release of the Fenbert Defendants, the Fenbert Defendants shall have paid Plaintiff contemporaneously with the execution of this Agreement the amount of One Thousand Dollars and No Cents (\$1,000.00), receipt of which is hereby acknowledged. This settlement payment shall be made by check payable to "Nelson Mullins Riley & Scarborough LLP Trust Account."

3. Dismissal of the Action. Within fourteen (14) days of the execution of this agreement, counsel for Plaintiff and the Fenbert Defendants shall execute a Stipulation of Dismissal of the Action with prejudice and the Plaintiff shall file the executed Stipulation of Dismissal with the Court.

4. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this Agreement to the fullest extent permitted by law.

5. Release by Plaintiff. In consideration of the payment called for in paragraph 2 above, the FDIC hereby releases and forever discharges the Fenbert Defendants and their current and former employees, agents, sureties, bonding companies, insurers, attorneys, companies, successors, assigns and affiliates of and from any and all claims, and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of or related to the facts, occurrences and transactions alleged in the action, including but not limited to any and all allegations related in any way to the Fenbert Defendants' role, responsibilities, duties, actions, or inactions as closing attorney on the sale of Property to Jayda Jones located at Atlanta, GA 30317.

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6. No Admission of Liability. Plaintiff acknowledges that this Agreement does not constitute an admission by the Fenbert Defendants as to the merits of any claim that the FDIC or its predecessors in interest, including IndyMac, has asserted, or could have asserted, in the Action and that the Fenbert Defendants have denied and continue to deny that they have any liability to Plaintiff as alleged in the Action. Likewise, the Fenbert Defendants acknowledge that this Agreement does not constitute an admission by Plaintiff that any asserted claim is or was in any way lacking in merit, and the Fenbert Defendants also acknowledge that this Agreement does not constitute an admission by Plaintiff as to the merits of any claim that the Fenbert Defendants have asserted, or could have asserted, in the Action. Nevertheless, Plaintiff and the Fenbert Defendants have concluded that continued litigation would be expensive and protracted and that it is desirable that the Action be settled fully and finally as between Plaintiff and the Fenbert Defendants in the manner and upon the terms and conditions set forth in this Agreement.

7. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. Plaintiff and the Fenbert Defendants have received independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement and the Plaintiff's giving of the release provided for herein.
- b. In connection with the execution of this Agreement and the making of the settlement provided for herein, no Party to this Agreement has relied upon any statement, representation or promise of any other Party not expressly contained herein.
- c. This Agreement is fully integrated and contains the entire agreement of the Parties hereto. There are no agreements or understandings between the Parties hereto

relating to the matters and the Plaintiff's release referred to in this Agreement other than as set forth in this Agreement, and this Agreement supersedes and replaces any and all prior negotiations and agreements between the Parties hereto, whether written or oral.

- d. Plaintiff and the Fenbert Defendants have made such investigation of the facts pertaining to the Plaintiff's release contained herein as they deem necessary.
- e. The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the role of the Party in drafting and preparation of the Agreement shall not be referred to in order to construe the Agreement against that Party, and that canon of contractual interpretation shall not be applied.
- f. This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This Agreement is signed freely by each Party executing it.
- g. The Parties have not assigned or transferred any of their claims being released herein.

8. Consideration. The consideration received in connection with this Agreement is fair, adequate and substantial and consists only of the terms set forth in this Agreement.

9. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the Parties to be charged with such modification.

10. Agreement Binding on Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective officers, directors, joint venturers, partners, employees, agents, servants, heirs, administrators, executors, successors, representatives and assigns.

11. Applicable Law. This Agreement has been negotiated and exchanged in the State of Georgia. As such, this Agreement and all matters relating thereto shall be governed by the laws of the State of Georgia without regard to its principles of conflicts of law. In addition, in the event of any disputes arising between the Parties out of this Agreement, the Parties agree that the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the Northern District of Georgia.

12. Execution and Delivery Required – Effective Date. This instrument shall not be considered to be the Agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the “Effective Date”). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the Agreement and shall become a binding and enforceable contract.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. Signatures on this Agreement, or any counterpart of this

Agreement, transmitted by facsimile machine or electronic mail in .pdf format shall have the same force and effect as original signatures.

14. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa.

15. Severability. In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect.

16. Warranty of Authority. Each Party or attorney whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed and that he or she is acting in the scope of such agency and authority. Each Party specifically represents and warrants that no signatures other than those made on this Agreement are necessary to bind the Parties to all of the obligations imposed by the Agreement.

17. Attorneys' Fees and Costs. Plaintiff and the Fenbert Defendants each agree to pay their own costs, attorneys' fees and expenses incurred in connection with the Action.

18. Captions and Headings. The captions, paragraph numbers and paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this agreement, nor in any way affect this Agreement.

19. Remedies. All Parties shall be entitled to all remedies available at law or in equity for any violation of this Agreement, including, but not limited to the remedy of specific performance.

20. Further Assurances. The Parties shall execute such other documents as may be reasonably necessary to carry out the terms and conditions of this Agreement.

21. Survival. All warranties, representations, covenants, and agreements set forth herein shall survive the Effective Date.

22. Compliance Dates. In the event that any date specified in this Agreement shall be on a Saturday, Sunday, or a nationally-declared holiday, then the date so specified shall be deemed to be the next business day following such date, and compliance by such business day hereunder shall not be deemed a default by either of the Parties under this Agreement.

23. Waiver. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.


24. Entire Agreement. This Agreement contains the complete agreement of the Parties concerning the subjects of this Agreement and supersedes all prior drafts of this Agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning that subject of this Agreement, whether in connection with the negotiation of this Agreement or otherwise. This agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. This Agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this Agreement, and this Agreement supersedes and discharges any and all

prior promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

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Dated: May 23, 2012


By:


RICHARD GILL
Authorized on behalf of The Federal Deposit Insurance Corporation, as receiver for IndyMac Federal Bank, F.S.B.

(b)(6)


Dated: May 15, 2012

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TIMOTHY W. FENBERT

(b)(6)

Dated: May 15, 2012

 AS PRESIDENT
TIMOTHY W. FENBERT
Authorized on behalf of Katima, Inc.


APPROVED AS TO FORM:

NELSON MULLINS RILEY & SCARBOROUGH
LLP

(b)(6)

Dated: May __, 2012


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GREGORY M. TAUBE, attorney
for Plaintiff the Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, F.S.B.

HEDRICK LAW LLC

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Dated: May __, 2012


L. BRUCE HEDRICK, attorney
for Defendants TIMOTHY W. FENBERT and KATIMA, INC.