
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this 4th day of January, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. ("FDIC-R"), and NL, Inc. dba RPM Mortgage, Inc., formerly known as Najarian Loans, Inc. dba Residential Pacific Mortgage ("NL"), RPM Mortgage, Inc. ("RPM") Erwin Robert Hirt, and Tracey Lee Hirt (NL, RPM, Erwin Robert Hirt and Tracey Lee Hirt are collectively referred to herein as the "Settling Defendants") (individually, the FDIC-R and each of the Settling Defendants may be referred to herein as a "Party" and collectively as the "Parties").

WHEREAS:

Prior to July 11, 2008, IndyMac Bank, F.S.B. ("IndyMac" or the "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.

NL and the Bank entered into a Mortgage Loan Purchase and Interim Servicing Agreement dated September 20, 2005 ("Purchase Agreement"). Pursuant to the terms of the Purchase Agreement, NL sold to the Bank various residential mortgage loans. The Bank's assets now belonging to the FDIC-R include any and all of the Bank's claims, demands, and causes of action, including all of the Bank's claims related to any and all loans NL sold under the Purchase Agreement to the Bank ("Purchase Agreement Loans").

NL and the Bank also entered into a Seller Contract and e-MITS™ User Agreement dated September 28, 2005 (“Seller Contract”). Pursuant to the terms of the Seller Contract, NL sold to the Bank various residential mortgage loans. The Bank’s assets now belonging to the FDIC-R include any and all of the Bank’s claims, demands, and causes of action, including all of the Bank’s claims related to any and all loans NL sold under the Seller Contract to the Bank (“Seller Contract Loans”). Hereinafter, the Purchase Agreement and the Seller Contract will be collectively referred to as the “Contracts,” while the Purchase Agreement Loans and Seller Contract Loans will be collectively referred to as the “Loans”.

A dispute has arisen between the Parties with respect to claims by the FDIC-R against NL for: a) repurchase and/or indemnity on certain of the Loans based on alleged breaches of representations and warranties set forth in the Contracts, and b) negligence and breach of duty by the Settling Defendants for acts related to the purchase and sale of the Loans. (Hereinafter, any and all present and future claims by the FDIC-R against the Settling Defendants under the Contracts arising from 1) an obligation to repurchase or indemnify for losses associated with the Loans, 2) any and all other residential mortgage loans sold by NL to IndyMac under the Contracts, or 3) negligence and/or breach of duty by the Settling Defendants or any of their employees or agents in connection with the Loans, is referred to as the “Claims”). 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.

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, the Settling Defendants shall pay the FDIC-R the total sum of Five Hundred Fifty Thousand dollars (\$550,000) (the "Settlement Amount"). The Settlement Amount shall be paid in two equal installments. On or before the thirtieth (30th) day following the execution of this Agreement, the Settling Defendants shall pay the FDIC-R the first installment payment in the total sum of Two Hundred Seventy Five Thousand dollars (\$275,000) (the "First Settlement Payment"). The First Settlement Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number Routing Number Reference: (b)(4) IndyMac/NL Settlement.

B. Thereafter, on or before the thirtieth (30th) day following payment of the First Settlement Payment, the Settling Defendants shall pay the FDIC-R an additional payment in the total sum of Two Hundred Seventy Five Thousand dollars (\$275,000) (the "Second Settlement Payment"). The Second Settlement Payment shall also be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number (b)(4) Routing Number Reference: IndyMac/NL Settlement. Hereinafter, the First Settlement Payment and the Second Settlement Payment shall be collectively referred to as the "Settlement Payments".

C. If the FDIC-R does not receive either the First Settlement Payment or the Second Settlement Payment in full on or before the date determined by subparagraphs A and B above ("Settlement Payment Due Dates"), 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 Dates through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(b)(3); or

2. enforce this Agreement and, in such event, the Settling Defendants agree to jurisdiction in Federal District Court in California, and the Parties agree that the losing Party shall pay all of the prevailing Party's reasonable attorney's fees and costs expended in any such dispute; or

3. declare this Agreement null and void, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and institute an action on FDIC-R's claims; and/or

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

Any extension of time for delivery of the Settlement Payments shall not prejudice the FDIC-R's right 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, or declare the Agreement null and void.

SECTION II: Releases.

Each Party acknowledges that this Agreement applies to any and 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 Payments, plus any interest accrued by the operation of Section I.C.1, supra, and except as provided in PARAGRAPH II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants and their respective employees, officers, directors, representatives, heirs, agents, executors, administrators, successors and assigns, 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 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.

Within five (5) days of the FDIC-R's receipt of the entire Settlement Amount, it shall cause to be filed in the lawsuit encaptioned *Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, N.A., v. NL, Inc., et al., Case No. CV11-05601 GHK (AJWx)*, which was filed

by it in the United States District Court for the Central District of California, Western Division, against the Settling Defendants, a Consent Motion for Dismissal With Prejudice of this entire lawsuit, against each and all of the Settling Defendants named in the action.

B. The Settling Defendants' Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, the Settling Defendants, on behalf of themselves, and their respective employees, officers, directors, representatives, heirs, agents, 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 the Settling Defendants, 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.

C. Exceptions to Release by FDIC-R.

1. 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 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-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 the Bank or any person or entity other than Bank;

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

c. which are not expressly released in PARAGRAPH II.A. above; or

d. arising out of any existing or failed financial institutions other than IndyMac.

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.

SECTION III: Assignment.

Notwithstanding any other provision in this Settlement Agreement, the Settling Defendants immediately, exclusively, and irrevocably assign to the FDIC-R any and all claims, rights, title, or interest 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 the Settling Defendants have or may have against any and all third parties arising out of or related to the Loans.

SECTION IV: Insolvency.

A. Insolvency.

The Settling Defendants warrant as to payments made by or on their behalf that at the time of such payment, each of them is not insolvent nor will the payment made by or on their behalf render any or each of them insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by the Settling Defendants and not by their counsel.

B. Preferences.

In the event that the FDIC-R is required to return any portion of the Settlement Payments due to a final order by a court that the transfer of the Settlement Payments 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 paragraph I(C) above, and/or otherwise permitted by law.

SECTION V: Termination.

In the event the FDIC-R exercises its right to declare this Agreement null and void as provided herein, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, January 1, 2012.

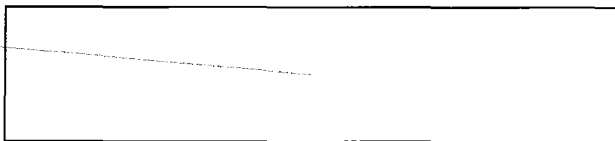
SECTION VI: Notices.

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

If to the FDIC-R:

Michael Delbick
Mortgage Recovery Law Group
700 North Brand Boulevard, Suite 830
Glendale, California 91203

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



If to the Settling Defendants:

James Brody
American Mortgage Law Group, PC
75 Rowland Way, Suite 350
Novato, CA 94945

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



SECTION VII: 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, the Settling Defendants 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 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 facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;

c. appearing to testify, 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 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, 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, her, 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.

**FDIC as Receiver for IndyMac
Bank, F.S.B.**

**NL, Inc. d.b.a. RPM Mortgage,
Inc., formerly known as Najarian
Loans, Inc. d.b.a. Residential
Pacific Mortgage**

(b)(6)

By:

By: _____

Name: Richard S. Gill

Name: _____

Title: Counsel

Title: _____

Date: 1-26-12

Date: _____

RPM Mortgage, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Erwin Robert Hirt

[Redacted]

(b)(6)

B:

Date: 11/26/12

Tracey Lee Hirt

(b)(6)

[Redacted]

(b)(6)

(b)(6)

Date: 11/26/12

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Bank, F.S.B.**

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Inc., formerly known as Najarian
Loans, Inc. d.b.a. Residential
Pacific Mortgage**

By: _____
Name: _____
Title: _____
Date: _____

By: (b)(6)
Name: (b)(6) Tracey L Hirt
Title: President
Date: 1/26/12

(b)(6)

RPM Mortgage, Inc.

By: (b)(6)
Name: Robert Hirt
Title: CEO
Date: 1/26/12

(b)(6)