

## RELEASE AND SETTLEMENT AGREEMENT

This Agreement is made and entered into on the date of the last signature below between FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as Receiver for INDYMAC BANK (hereinafter referred to as "FDIC") and CAROL ZHANG ("Carol Zhang"), and is made with reference to the following facts:

**WHEREAS**, a dispute has existed between FDIC and Carol Zhang; and

**WHEREAS**, FDIC and Carol Zhang desire to compromise, terminate and settle the matter entitled *Federal Deposit Insurance Corporation v. James Bert Coker, et al.*, United States District Court Northern District of California, Case No. CV 09-3732 WHA (hereinafter the "subject civil action").

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and concurrently with the execution hereof, the parties hereto, agree as follows:

1. Carol Zhang shall execute the attached Stipulation for Judgment (Exhibit "A" hereto) and shall pay to FDIC the sum of Two Hundred Thousand Dollars (\$200,000.00). Provided that Carol Zhang does not interfere with the benefits to which Plaintiff is entitled under Plaintiff's agreement with co-defendants [REDACTED] and provided that Carol Zhang pays the sum of Four Thousand Dollars (\$4,000.00) upon execution of this Agreement and seven monthly payments of not less than Five Hundred Dollars (\$500.00) and without default on the first day of each and every month beginning February 1, 2010, the FDIC agrees to accept the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) in full and complete satisfaction of the Stipulation for Judgment (Exhibit "A") and shall waive any right to collect any additional sums from Carol Zhang. (b)(6)
2. Upon receipt of full payment from Carol Zhang as set forth in paragraph 1 herein above, FDIC shall cause its attorneys to execute and file a Request for Dismissal with prejudice of the subject civil action as to Carol Zhang only. Upon receipt of full payment from Carol Zhang, all liens shall be released, including the lien filed in Contra Costa County on October 29, 2009, Document No. 2009-07-0258811-00, as to Carol Zhang only.
3. Each party to this Agreement shall bear all its costs, expenses and attorney's fees incurred in connection with the subject civil action. No party shall have the right to seek reimbursement for any such costs, attorney's fees or expenses from any other party hereto.
4. This Agreement shall not be assignable by Carol Zhang and shall be binding upon and inure to the benefit of each party, its successors in interest and any assignee of the FDIC.
5. This Agreement is made only for the benefit of the parties hereto and their valid successors and assignees, and is not intended to confer any rights or benefits whatsoever upon persons or entities who are not parties to this Agreement and in particular no rights or benefits

are conferred on James Bert Coker. Nothing contained herein shall be deemed a partial or full satisfaction of that certain Judgment entered in the subject civil action (Exhibit "B" hereto).

6. Carol Zhang hereby expressly and fully releases, acquits and forever discharges the FDIC, together with the FDIC's agents, employees, affiliates, officers, directors and shareholders, attorneys, insurance companies, servants, assigns, predecessors, successors, heirs, executors and administrators (all of the foregoing persons and entities hereinafter collectively referred to as the "Releasees") of and from any and all claims, debts, liabilities, liens, actions, causes of action, demands, rights, damages, costs, losses of services, expenses, attorney's fees and compensation of every nature, character and description which each party now holds or has or at any time held or may hereafter hold against the Releasees on account of or in any way arising out of any or all known or unknown, foreseen and unforeseen, injuries, damages, lost profits and consequences thereof resulting from or in any way arising out of any and all subject matter including but not limited to the allegations of the Complaint in the subject civil action.

7. This Agreement constitutes a compromise and settlement of claims which are denied and contested and nothing in the Settlement, this Settlement Agreement, or any document referred to herein, nor any act (including, but not limited to, the execution of this Settlement Agreement and/or the payment of the consideration for this Settlement Agreement) of any party hereto, nor any transaction occurring between any parties hereto prior to the date hereof, is or shall be treated, construed or deemed as an admission by any party hereto of any liability, fault, responsibility or guilt of any kind to any other party hereto or to any person, as to any allegation or claim in the subject civil action or otherwise, for any purpose whatsoever, all such liability, fault, responsibility and guilt of any kind being expressly denied by the parties.

8. Carol Zhang waives any and all rights against the FDIC and Releasees under §1542 of the California Civil Code which provides

"A general release does not extend to claims which the creditors 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 effected his or her settlement with the debtor."

9. Each party hereto represents and warrants to the other parties that none of them have heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim, demand, damage, debt, liability, obligation, account, reckoning, cost, expense, lien, action or cause of action, or any part or portion thereof which in any way relates or pertains to the subject civil action. Each party hereto does jointly and severally agree to indemnify and hold harmless all of the other parties hereto against any claim, demand, debt, liability, account, reckoning, obligation, cost, damage, expense, lien, action or actions (including the payment of attorneys' fees and costs actually incurred, whether or not litigation be commenced), based on or arising out of or in connection with any such transfer or assignment or purported or claimed transfer or assignment.

10. Neither this Agreement nor any provision of this Agreement may be modified or waived in any way, except by an agreement in writing signed by each of the parties hereto,

consenting to such modification or waiver.

11. All parties hereto do hereby acknowledge and agree that they have been represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Agreement, and that they have executed this Agreement with the consent and upon the advice of said independent counsel.

12. This Agreement may be pleaded as a full and complete defense to, and the parties hereby consent that it may be used as the basis for an injunction against, any action, suit or other proceeding based on claims released by this Agreement.

13. Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and including the feminine and neuter, and the singular to refer to and include the plural, and vice versa.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signature by facsimile is acceptable, and by transmitting such facsimile signatures, the parties each represent and warrant thereby that they will promptly, upon request, transmit the original to the other party by mail, messenger or overnight courier to the other party provided, however, that failure to do so will not affect the enforceability of this Agreement.

15. This Agreement constitutes the entire Agreement between the parties hereto and the terms of this Agreement are contractual and are not mere recitals. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

16. All questions with respect to the construction or interpretation of this Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of California. This Agreement shall be deemed to have been executed in San Francisco County, in the State of California. In the event of any dispute or claim in law or equity arising between the parties regarding this Agreement or any resulting transaction, the parties agree that venue for such action will be in the Superior Court of San Francisco County, California.

17. In the event that any action, motion, or other proceeding is brought to enforce the terms of this Agreement, the prevailing party shall recover its costs and reasonable attorney fees.

DATE: January 14, 2010

**FEDERAL DEPOSIT INSURANCE CORPORATION**, in its capacity as Receiver for INDYMAC BANK

(b)(6)

  
Signature  
Richard S. Gill, Counsel  
Print Name and Title

DATE: January 13, 2010

CAROL ZHANG

[Redacted Signature]

Signature

(b)(6)

APPROVED AS TO FORM AND CONTENT:

DATE: ~~January 12, 2010~~ January 11, 2010

SNIPPER, WAINER & MARKOFF

[Redacted Signature]

BY:

MAURICE WAINER

Attorneys for FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as Receiver for INDYMAC BANK

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