

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

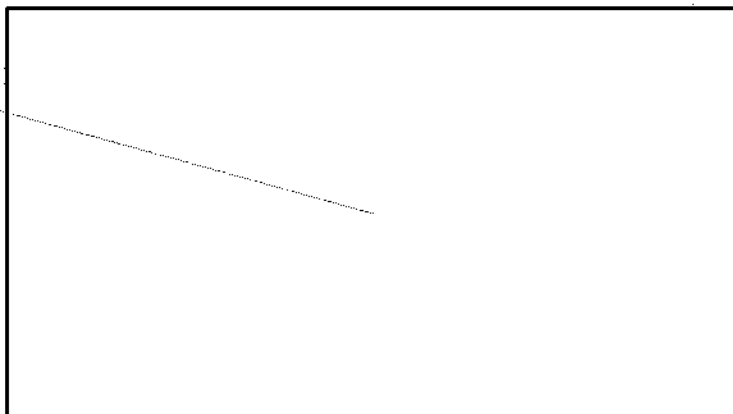
THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is entered into and made effective as of the 20th day of March, 2009 ("Effective Date"), by and between F.D.L.C. AS CONSERVATOR FOR INDYMAC FEDERAL BANK, F.S.B., F/K/A INCYMAC BANK, F.S.B. ("IndyMac") and ALMA PEREZ ("Perez"). IndyMac and Perez may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

1. RECITALS

1.1 On or about June 17, 2005, IndyMac and Perez, entered into a written Customer Contract and e-mits User Agreement (hereinafter "Agreement") and incorporated Lending Guide ("Guide").

1.2 Pursuant to the Agreement, Perez submitted to IndyMac the following five (5) loans (hereinafter "Loans"):

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



1.3 IndyMac claims that Perez breached certain representations and warranties contained in the Agreement and Guide in submitting the Loans to IndyMac. IndyMac demanded Perez repurchase the Loans and/or indemnify IndyMac for its losses. Perez failed to do so.

1.4 On or about May 2, 2008, IndyMac filed a lawsuit against Perez entitled *IndyMac Bank, F.S.B. v. Alma Perez, an individual*, Case No. 30-2008-00106202, including causes of action for breach of contract, express indemnity, specific performance, and negligent misrepresentation arising out of the Loans ("Action")

1.5 Perez filed an Answer to IndyMac's Complaint on September 24, 2008.

1.6 The Parties desire and have agreed to settle all claims relating to the repurchase of the above-referenced Loans and the Action in their entirety upon the terms and conditions hereinafter set forth.

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.** Perez shall pay to IndyMac the total sum of \$70,000 (seventy thousand dollars) (the "Settlement Funds"), which will accrue interest at a rate of 10% per annum. Interest shall begin to accrue on May 1, 2009. Payments shall be according to the schedule set forth below. The first payment shall be made upon execution of this Settlement Agreement and payments shall be made each month thereafter, beginning on the 1st of the first month following execution of this Settlement Agreement, until the sum of \$70,000 is paid in full. Payments shall be made by check or draft made payable to IndyMac Federal Bank, FSB and sent to Wright, Finlay & Zak, L.L.P., 4665 MacArthur Court, Suite 280, Newport Beach, CA 92660.

2.3 Concurrently with the signing and delivery of this Settlement Agreement and making the first payment, Perez shall execute a Stipulation for Entry of Judgment 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 Perez performs under the terms of this Settlement Agreement.

2.4 The following is the payment schedule:

- a. \$200.00 per month from May 1, 2009 through April 1, 2010.
- b. \$300.00 per month from May 1, 2010 through April 1, 2011.

c. \$400.00 per month from May 1, 2011 through April 1, 2012.

d. \$500.00 per month from May 1, 2012 and continuing until the Stipulated Judgment, including accrued interest, is paid in full.

2.5 In the event Perez defaults by failing to make a timely payment to IndyMac as set forth in this Settlement Agreement, IndyMac shall give written notice via mail of the default and notice of intent to enter Judgment (Pursuant to Stipulation) to Perez c/o Lorrie A. Walton at The Law Offices of Lorrie A. Walton at 2300 E. Katella Ave. , Suite 435, Anaheim, CA 92806, (714) 978-9988.

2.6 Perez shall have five (5) business days from receipt of the notice of intent to enter Judgment to cure the default. If Perez 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 Perez less any consideration already received by IndyMac pursuant to the settlement. Judgment may be entered by *ex parte* notice given to Perez. The amount actually received by IndyMac shall be deducted from the amount of the Judgment (Pursuant to Stipulation).

2.7 Within fifteen (15) business days of IndyMac's counsel's receipt of the first payment due under the payment plan, IndyMac's counsel shall file a request for dismissal with prejudice.

2.8 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 the court shall retain jurisdiction over the parties to enforce this Settlement Agreement.

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

3. RELEASE

3.1 **Unknown Claims.** Each Party acknowledges and agrees that the release they give to the other Party 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 that Party may have against the other Party arising from or in conjunction with the repurchase of the Loans, and each Party hereby expressly waives application of any applicable state statute, including but not limited to *California Civil Code §1542*.

3.2 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."

3.3 Each Party understands and acknowledges 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 out of the repurchase of the Loans or any facts or circumstances related to the repurchase of the Loans, 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 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.

3.4 Except for the rights, duties, and obligations set forth in this Settlement Agreement and the Parties obligations arising out of any loans other than the Loans specified in this Action, IndyMac and Perez 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, members, partners, joint venturers, independent contractors, attorneys, insurers, agents, investors, successors, assigns, representatives, officers, directors, shareholders, agents, 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 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 repurchase of the Loans. 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 repurchase of the Loans.

3.5 The Parties acknowledge that any and all loans sold to IndyMac by Perez, other than the Loans, are still subject to, without limitation, repurchase and/or indemnification for breaches of representations and warranties as set forth in the Agreement. Accordingly, any and all claims, damages, losses or breaches of

representations and warranties of any type or nature under the Agreement are not part of this Settlement Agreement, and are not released.

3.6 Express Reservation from Releases by FDIC. Notwithstanding any other provision, by this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, (a) any claims or causes of action that do not arise from or relate to the acts pled in the Action, that arise from or relate to the Action or the defense of the same, or (b) any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office in any federal judicial district. In addition, the FDIC 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.

3.7 Confidentiality. Except as authorized in this Section 3.5, 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, the fact of this settlement, 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.

3.8 Conditions of Execution. Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

3.9 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.

3.10 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.

3.11 Governing Law. The Parties agree to submit to the Courts of the County of Orange, 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.

3.12 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.

3.13 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.

3.14 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.

3.15 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.

3.16 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.

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

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

3.19 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.

3.20 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.

3.21 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.

3.22 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 pertaining to the repurchase of the Loans. 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.

[signatures continued on next page]

For: F.D.I.C. As Conservator for
IndyMac Federal Bank, F.S.B., F/K/A
IndyMac Bank, F.S.B.

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form and Content:

Wright, Finlay & Zak, LLP

By: _____

Robert F. Finlay, Esq.
Attorneys for F.D.I.C. As
Conservatory for IndyMac Federal
Bank, F.S.B., F/K/A IndyMac Bank,
F.S.B.

For: Alma Perez

By: _____ (b)(6)

Name: Alma Perez

Title: _____

Date: April 9, 2009

Lorrie A. Walton, Attorney At Law

By: _____ (b)(6)

Lorrie A. Walton, Esq.
Attorneys for Alma Perez

**For: F.D.I.C. As Conservator for
IndyMac Federal Bank, F.S.B., F/K/A
IndyMac Bank, F.S.B.,**

By:

Name: _____

Title: Ignacio Gomez
Vice President

Date: _____

For: Alma Perez

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form and Content:

Wright, Finlay & Zak, LLP

By: _____

Robert F. Finlay, Esq.
Attorneys for F.D.I.C. As
Conservatory for IndyMac Federal
Bank, F.S.B., F/K/A IndyMac Bank,
F.S.B.

Lorrie A. Walton, Attorney At Law

By: _____

Lorrie A. Walton, Esq.
Attorneys for Alma Pérez

**For: F.D.I.C. As Conservator for
IndyMac Federal Bank, F.S.B., F/K/A
IndyMac Bank, F.S.B.**

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form and Content:

Wright, Finlay & Zak, LLP

By:

Robert F. Finlay, Esq.
Attorneys for F.D.I.C. As
Conservatory for IndyMac Federal
Bank, F.S.B., F/K/A IndyMac Bank,
F.S.B.

For: Alma Perez

By: _____

Name: _____

Title: _____

Date: _____

Lorrie A. Walton, Attorney At Law

By: _____

Lorrie A. Walton, Esq.
Attorneys for Alma Perez

(b)(6)