

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Valley Bank (“FDIC-R”), and Larry C. Henson, Michael Henson and Robert Fick (collectively, the “Settling Potential Defendants”), (individually, the FDIC-R and the Settling Potential Defendants may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to June 20, 2014, Valley Bank (“Bank”) was a depository institution organized and existing under the laws of the State of Illinois.

On June 20, 2014, the Illinois Department of Financial & Professional Regulation closed the Bank and, pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to, among other things, all rights, titles, powers, and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against the Bank’s former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts as directors, officers, and employees of the Bank.

The FDIC-R has asserted claims against the Settling Potential Defendants, each of whom served at various times as a director and/or officer of the Bank, for \$30.7 million in damages arising from the Settling Potential Defendants’ alleged conduct from May 2009 through June 2013 relating

to their respective functions, duties, and acts as directors and/or officers of the Bank ("FDIC-R's Claims"). The Settling Potential Defendants have denied liability for the FDIC-R's Claims.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty 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 Potential Defendants, jointly and severally, agree to pay to the FDIC-R the sum of \$3,025,000.00 (the "Settlement Payment") in two installments:

- 1) \$1,025,000.00 by and/or before July 5, 2017; and
- 2) \$2,000,000.00 by and/or before September 5, 2017.

B. The Settlement Payment installments to the FDIC-R shall be made by direct wire transfer into an account designated by the FDIC-R by written notice to the attorneys for the Settling Potential Defendants. In the event that the FDIC-R does not receive a Settlement Payment installment by the dates determined in Section I.A. above, interest shall accrue on the unpaid installments at the rate of 5 percent per annum from the dates determined in Section I.A. above until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the final installment date determined by Section I.A. above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by Section I.A. above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or

2. Enforce this Agreement, in which event the Settling Potential Defendants agree to jurisdiction in the United States District Court for the Central District of Illinois and to pay all of the FDIC-R's reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, return any Settlement Payment installments previously made, and institute an action on the FDIC-R's Claims, to which the Settling Potential Defendants agree. The Settling Potential Defendants further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's Claims and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

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

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of the Settlement Payment in full (including all accrued interest).

SECTION II: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Potential Defendants, and their respective heirs, executors, trustees, administrators, representatives, transferees, successors and assigns, from any and all claims,

demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to the Bank or the performance, nonperformance, or manner of performance of the Settling Potential Defendants' respective functions, duties, and actions as officers and/or directors of the Bank.

B. The Settling Potential Defendants' Release.

Effective simultaneously with the release granted in Section II.A above, the Settling Potential Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Potential Defendants' respective functions, duties, and actions as officers and/or directors of the Bank.

C. Exceptions from Releases 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 Potential 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 the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

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

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or diminishing its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et seq.*, if appropriate.

SECTION III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that the Settling Potential Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, the Settling Potential

Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, other distributions, or proceeds.

SECTION IV: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties 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, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he 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 or its counsel.

C. Financial Disclosure Representation. Each Settling Potential Defendant has submitted financial information to the FDIC-R and herein affirms that his financial information is true and accurate in all material respects as of the date of the respective documents containing financial information and that there have been no material changes to each Settling Potential Defendant's financial information since that information has been provided until the date of this Agreement. Each Settling Potential Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Potential Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of the financial information. In addition to the above, if the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Potential Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Potential Defendant shall be

obligated to pay to the FDIC-R the lesser of (i) the value of the Settling Potential Defendant's undisclosed material interest in such asset(s); or (ii) the amount of unpaid damages alleged against the Settling Potential Defendant.

SECTION V: Reasonable Cooperation

A. The 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 perform the terms of this Agreement.

B. Except as it may interfere with any constitutional right of the Settling Potential Defendants, each Settling Potential Defendant agrees to reasonably cooperate fully with the FDIC-R in connection with any action required under this Agreement or in connection with any pending litigation wherein the FDIC-R is a party. Such cooperation shall consist of:

1. Producing all documents requested by the FDIC-R, without necessity of subpoena, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;
2. Appearing as requested 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;
3. Testifying as requested by the FDIC-R, without necessity of subpoena, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank; and
4. Signing truthful affidavits regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

SECTION VI: 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 except to enforce its terms. This Agreement is a good faith settlement by the Parties of the FDIC-R's Claims.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed, and enforced according to applicable federal law, or in its absence, the laws of the State of Illinois.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

Gregory K. Conway
Counsel, Federal Deposit Insurance Corporation
3501 Fairfax Drive, VS-B-7046
Arlington, Virginia 22226

(b)(6) _____ [Redacted]

Christine Hsu
Counsel, Federal Deposit Insurance Corporation
3501 Fairfax Drive, VS-B-7054
Arlington, Virginia 22226

(b)(6) _____ [Redacted]

and

Susan Valentine
Valentine Austriaco & Bueschel P.C.
105 West Adams Street, 35th Floor
Chicago, Illinois 60603

(b)(6) _____ [Redacted]

If to the Settling Potential Defendants:

For Robert Fick:

Terry M. Giebelstein
Lane & Waterman, LLP
220 North Main Street, Suite 600
Davenport, Iowa 52801

(b)(6) _____ [Redacted]

For Larry Henson:

Randall M. Lending
Vedder Price
222 North LaSalle Street
Chicago, Illinois 60601

(b)(6) _____ [Redacted]

For Michael Henson:

Edward J. Halper
Taft Stettinius & Hollister LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601

(b)(6) _____ [Redacted]

E. Entire Agreement and Amendments. 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. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR VALLEY BANK

Date: June 30, 2017

BY: _____

[Redacted Signature Box]

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: _____

LARRY C. HENSON

Date: _____

MICHAEL HENSON

Date: _____

ROBERT FICK

(b)(6)

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Date: _____

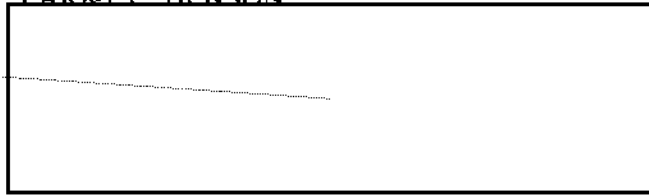
BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: 6/30/2017

LARRY HENSON



Date: _____

MICHAEL HENSON

Date: _____

ROBERT FICK

(b)(6)

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR VALLEY BANK

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: _____

LARRY C. HENSON

Date: 6-30-17

MICHAEL HENSON

(b)(6)



Date: _____

ROBERT FICK

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR VALLEY BANK

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

Date: _____

LARRY C. HENSON

Date: _____

MICHAEL HENSON

Date: 6-30-17

ROBERT EICK

[Redacted Signature Box]

(b)(6)