

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 NetBank, F.S.B., (“FDIC” or “Plaintiff”), on the one hand and First American Title Insurance Company (“FATIC” or “Defendant”) on the other hand. The FDIC and FATIC are referred to collectively as the “Parties.”

RECITALS

A. WHEREAS, the FDIC filed a Complaint against FATIC and others entitled *Federal Deposit Insurance Corporation as Receiver of NetBank, F.S.B. v. Golden Key Realty & Mortgage Banker, Inc.*, Case3:10-cv-04285-WA, in United States District Court, Northern District of California, (the “Action”).

B. WHEREAS, the Parties desire to resolve the FDIC’s claims against FATIC, and agree as follows:

AGREEMENT AND MUTUAL 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 FATIC to FDIC. No later than thirty (30) business days following full execution of this Agreement, Defendant FATIC shall pay Plaintiff the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). This settlement payment shall be made by sending a check to “Rudow Law Group, LLC,” Reference: FATIC Settlement. The

payee should be the FDIC as Receiver for NetBank, FSB. The Parties agree that timely receipt of the Settlement Payment is an essential term of this Agreement, and a condition to the effectiveness of this Agreement.

3. Dismissal of the Action. Together with the execution of this Agreement, counsel for Plaintiff and Defendant shall execute a Stipulation of Dismissal of the Action against FATIC, with prejudice. Upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, counsel for 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. The FDIC hereby releases and forever discharges FATIC and its current and former officers, directors, employees, agents, policy issuing agents (including but not limited to Alliance Title Company, its current, former and future agents, employees and representatives), representatives, shareholders, sureties, bonding companies, insurers, attorneys, subsidiaries, predecessors, related companies, parent 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 the claims or causes of action set forth in the Action, except as expressly reserved in Paragraph 6, below. Nothing herein shall be deemed a release of Golden Key Realty & Mortgage Banker, Inc. or Samuel Gbilila.

6. Express Reservations from Release. Notwithstanding any other provision contained herein, by this Agreement, the Parties do not release, and expressly preserve 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 facts, occurrences and transactions alleged in the Action, (b) any claims brought on behalf of another failed institution or another governmental entity or any defenses to such claims, or (c) any claims relating to the facts, occurrences and transactions alleged in the Action against any other person or entity not released in Paragraph 5, above, and Paragraph 7, below. This Agreement does not waive or release any claim relating to or arising from any loan other than the loans at issue in the Action. In addition, this Agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office, or any other federal department or agency, for violation of any federal criminal statutes, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, nor any defenses to such claims.

7. Release by Defendant. Defendant hereby releases and forever discharges Plaintiff and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent 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 the claims or causes of action set forth in the Action, except as expressly reserved in Paragraph 6, above. Nothing herein shall be deemed a release of Golden Key Realty & Mortgage Banker, Inc. or Samuel Gbilila.

7.A. Waiver of Civil Code Section 1542 With respect to the matters herein released, the Parties expressly intend to relinquish all claims, whether or not now known, and expressly waive any and all rights and benefits conferred on them by the provisions of Section 1542 of the Civil Code of the State of California, which reads:

A general release does not extend to claims which the creditor does not know or suspects 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.

The Parties understand and acknowledge the significance and consequences of such waiver of the provisions of Section 1542.

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 California. As such, this Agreement and all matters relating thereto shall be governed by the laws of the State of California 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 District of California.

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 to the fullest extent permitted under the law.

16. Warranty of Authority. Each Party 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 Party to all of the obligations imposed by the Agreement and that all corporate and/or governmental approvals necessary to bind the Party to this Agreement have been received. The Parties have not assigned or transferred any of their claims being released herein and have the standing and authority to release said claims.

17. Attorneys' Fees and Costs. Plaintiff and Defendant 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. Notices. Any notice required under this Agreement shall be in writing and shall be sent via both e-mail and either by (i) hand delivery or certified or registered mail, postage prepaid, with return receipt requested, or (ii) fax, with a conformed copy by US Mail, postage prepaid, and with such writing to be addressed to the Parties as follows:

Person To Receive Notice	Notification Information
Defendant:	Jeffrey H. Lowenthal Edward Egan Smith Steyer Lowenthal Boodrookas Alvarez & Smith LLP 1 California Street, Suite 300 San Francisco, CA 94111 Telephone: [REDACTED] Facsimile: [REDACTED]
Plaintiff:	William Rudow, Esq. Rudow Law Group, LLC 5603 Newbury Street Baltimore MD 21209 Telephone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]

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

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

The above addresses may be changed by any Party as to such Party by providing the other Parties notice of any address change in the same manner as is provided above, and which change shall be effective as to any Party upon receipt of written notice from the other Party. In the event that written notice, demand, or request is made as provided in this paragraph, that writing shall be deemed to have been received by the Party to whom it was addressed on the earliest of (i) the date that the notice was hand delivered, (ii) the date the notice was sent via facsimile (so long as a facsimile transmittal confirmation sheet is contemporaneously generated by the facsimile machine from which the transmission occurred), or (iii) three days after properly addressed notice was deposited with the U.S. Postal Service, applicable postage prepaid.

20. 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.

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

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

23. 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.

24. 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.

25. Jury Trial Waiver. The Parties hereby waive any and all rights that they may otherwise have to a trial by jury in any action, proceeding, claim, counterclaim or third party complaint, whether in contract or tort, at law or in equity, arising out of or in any way related to this Agreement.

26. 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. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language ultimately agreed to in this Agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this Agreement, the fact that other words may have been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this Agreement. 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.

27. No Admission of Liability. The parties understand and acknowledge that this Settlement Agreement Constitutes a settlement of disputed claims and is not an admission of liability by any party.

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
NETBANK FSB

(b)(6)

Dated: 5/23/, 2012

[Redacted Signature]

Robert J. DeHenzel, Jr. Esq.
Authorized on behalf of The Federal Deposit
Insurance Corporation, as receiver for NetBank,
F.S.B.

FIRST AMERICAN TITLE INSURANCE
COMPANY

Dated: _____, 2012

By: _____
Georgina Injayan
Authorized on behalf of FATIC

APPROVED AS TO FORM:

Dated: _____, 2012

RUDOW LAW GROUP, LLC

By: _____
William Rudow Law Group, LLC
Attorneys for Plaintiff
The Federal Deposit Insurance Corporation, as
Receiver for NetBank, F.S.B.

Dated: _____, 2012

STEYER, LOWENTHAL, BOODROOKAS,
ALVAREZ & SMITH LLP

By: _____
Edward Egan Smith
Attorneys for Defendant
First American Title Insurance Company

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Dated: 5/23/, 2012

[Redacted Signature]

Robert J. DeHenzel, Jr. Esq.
Authorized on behalf of The Federal Deposit
Insurance Corporation, as receiver for NetBank,
F.S.B.

FIRST AMERICAN TITLE INSURANCE
COMPANY

Dated: _____, 2012

By: _____
Georgina Injayan
Authorized on behalf of FATIC

APPROVED AS TO FORM:

Dated: 5/23/12, 2012

RUDOW LAW GROUP, LLC

(b)(6)

By: [Redacted Signature]
William Rudow Law Group, LLC
Attorneys for Plaintiff
The Federal Deposit Insurance Corporation, as
Receiver for NetBank, F.S.B.

Dated: _____, 2012

STEYER, LOWENTHAL, BOODROOKAS,
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By: _____
Edward Egan Smith
Attorneys for Defendant
First American Title Insurance Company

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NETBANK, FSB

Dated: _____, 2012

By: _____
Robert J. DeHenzel, Jr, Esq.
Authorized on behalf of The Federal Deposit
Insurance Corporation, as receiver for NetBank,
F.S.B.

FIRST AMERICAN TITLE INSURANCE
COMPANY

(b)(6)
Dated: 5/16, 2012

By: _____
Georgina Injayan
Authorized on behalf of FATIC

APPROVED AS TO FORM:

Dated: _____, 2012

RUDOW LAW GROUP, LLC

By: _____
William Rudow Law Group, LLC
Attorneys for Plaintiff
The Federal Deposit Insurance Corporation, as
Receiver for NetBank, F.S.B.

Dated: _____, 2012

STEYER, LOWENTHAL, BOODROOKAS,
ALVAREZ & SMITH LLP

By: _____
Edward Egan Smith
Attorneys for Defendant
First American Title Insurance Company

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CORPORATION AS RECEIVER FOR
NETBANK, FSB

Dated: _____, 2012

By: _____
Robert J. DeHenzel, Jr, Esq.
Authorized on behalf of The Federal Deposit
Insurance Corporation, as receiver for NetBank,
F.S.B.

FIRST AMERICAN TITLE INSURANCE
COMPANY

Dated: _____, 2012

By: _____
Georgina Injayan
Authorized on behalf of FATIC

APPROVED AS TO FORM:

Dated: _____, 2012

RUDOW LAW GROUP, LLC

By: _____
William Rudow Law Group, LLC
Attorneys for Plaintiff
The Federal Deposit Insurance Corporation, as
Receiver for NetBank, F.S.B.

Dated: 5.16, 2012

STEYER, LOWENTHAL, BOODROOKAS,
ALVAREZ & SMITH LLP

By:
Edward Egan Smith
Attorneys for Defendant
First American Title Insurance Company

(b)(6)