

SETTLEMENT AND RELEASE AGREEMENT

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

Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank ("FDIC-R") and Cal Coast Financial Corporation ("CCFC") (individually, FDIC-R and CCFC may be referred to herein as "Party" and collectively as the "Parties"). This Agreement shall be effective as of the date last executed by any Party ("Effective Date").

RECITALS

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank ("WaMu") was a depository institution organized and existing under the laws of the United States;

On September 25, 2008, the Office of Thrift Supervision closed the Bank and pursuant to 12 U.S.C. § 1821(c), Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), FDIC-R succeeded to all rights, titles, powers and privileges of WaMu, including those with respect to its assets;

Among the assets to which FDIC-R succeeded were all of WaMu's claims, demands, and causes of action against mortgage brokers;

On August 9, 2023, FDIC-R filed a complaint for money damages against CCFC. Those claims for damages are now pending in the United States District Court for the Central District of California in *FDIC-R v. CCFC*, No. 8:23-cv-1458 ("Action"). CCFC has denied liability in the Action;

CCFC has represented that it intends to wind down its business operations by March 1, 2025; and

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further 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, CCFC shall pay FDIC-R the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) ("the Settlement Payment") on or before May 1, 2024. The Settlement Payment shall constitute a debt due and owing to FDIC-R, an instrumentality, agency and/or other entity of the United States, on the Effective Date. The debt shall be discharged by payment in full to FDIC-R.

B. CCFC shall deliver the Settlement Payment to FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number to be provided by FDIC-R, contemporaneous with signing the Agreement.

C. If FDIC-R does not receive the Settlement Payment in full on or before its due date, then CCFC shall be in default of its payment obligations ("Default"). Upon Default, FDIC-R may declare the entire unpaid portion of the Settlement Payment immediately due and payable, and interest shall accrue thereon at the rate of five percent (5%) per annum or the rate calculated in accordance with 26 U.S.C. § 6621(a)(2), whichever rate is higher ("Default Interest Rate"), on the unpaid total until paid in full, and FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above;
2. Enforce this Agreement, in which case CCFC agrees to exclusive

jurisdiction and venue in United States District Court in the Central District of California; and/or

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

Any decision by FDIC-R to extend the time, and any extension of time, under Section I.C.1 for delivery of the Settlement Payment or any decision by FDIC-R to accept a portion of the Settlement Payment, and any acceptance of a portion of the Settlement Payment, shall not prejudice FDIC-R's rights to take any of the actions set forth in Section I.C.1 through I.C.3 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten (10) business days after the latter of 1) full execution of this Agreement by all of the Parties and 2) receipt of the Settlement Payment, FDIC-R shall file a stipulation of dismissal and joint motion for order of dismissal pursuant to Federal Rule of Civil Procedure 41, executed by the attorneys for all Parties hereto, in substantially the form attached as Exhibit A, and it will lodge an Order in substantially the form as Exhibit B.

SECTION III: Releases

A. FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., FDIC-R, for itself and its successors and assigns, hereby releases and discharges CCFC and its respective parents, subsidiaries, and affiliates, and their respective officers, agents, representatives, 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 FDIC-R, that arise from or relate to

CCFC's services as a mortgage broker for WaMu, including but not limited to those claims alleged in the Action.

B. CCFC's Reciprocal Release.

Effective simultaneously with the release granted in Section III.A. above, CCFC and its respective parents, subsidiaries, and affiliates, and their respective successors and assigns hereby releases and discharges 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 CCFC's services as a mortgage broker for WaMu, including but not limited to those claims alleged in the Action.

C. Release of Unknown Claims

Each of FDIC-R and CCFC acknowledges that it has been advised by its attorneys concerning, and is familiar with, California Civil Code Section 1542 and expressly waives any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 or any law of any other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to the provisions of the California Civil Code Section 1542, including that provision itself, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Parties acknowledge that inclusion of the provisions of this Paragraph D in this Agreement was a material and separately bargained-for element of this Agreement.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, FDIC, in any capacity, 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 CCFC 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, WaMu, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to WaMu or any person or entity other than WaMu;
 - b. by FDIC in any capacity other than as Receiver for WaMu; and
 - c. Against any person or entity not expressly released by 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 Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish 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 or entity.
3. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed or interpreted as waiving, or intending to waive, any claims that could be brought by the United States or any department, agency or instrumentality thereof (other than FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.

SECTION V: 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 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 its counsel.

C. Financial Disclosure Representation. CCFC has submitted financial information to FDIC-R including a balance sheet and profit and loss statement as of December 31, 2023, and herein affirms that the financial information reported therein is materially accurate as of the date of this agreement. CCFC expressly acknowledges that, in determining to settle the claims released herein, FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by CCFC and its representation that it intends to wind down its business by March 1, 2025. FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If FDIC-R establishes via a final adjudication in an appropriate judicial forum that CCFC failed to disclose any material interest, legal, equitable, or beneficial, in any asset, CCFC agrees to cooperate fully with FDIC-R to provide updated financial information and to pay to FDIC-R the lesser of (1) the value of CCFC's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages.

SECTION VI: Reasonable Cooperation

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 effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

SECTION VII: Other Matters

A. No Admission of Liability. The 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.

B. Counterparts and Digital Signatures. This Agreement may be executed digitally by DocuSign or similar services which use public key cryptography or by hand, in any number of counterparts, and delivered electronically or physically, each original or electronic copy thereof will be deemed an original, and all of which when taken together constitute one and the same Agreement.

C. Choice of Law/Jurisdiction. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of California. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute. All Parties hereto submit to the personal jurisdiction of the United States District Court for the Central District of California for purposes of implementing and enforcing the settlement embodied in this Agreement.

D. Notices. Any notices required hereunder shall be sent by nationally recognized overnight delivery service (e.g. FedEx or UPS), and by email, to the

following:

If to FDIC-R: Stuart Tonkinson
 Federal Deposit Insurance Corp.
 3501 Fairfax Drive
 Arlington, Virginia 22226
 Email: jtonkinson@fdic.gov
 (214) 673-7549

If to CCFC: Roger Bakshi
 Cal Coast Financial, Inc.
5960 5906 Stoneridge Drive, Suite 100
 Pleasanton, CA 94588
 E-mail: Roger@calcoastmtg.com
510 (925) 683-9850

With a copy to: Mukesh Advani
 The Advani Law Firm
 2603 Camino Ramon, Suite 200
 San Ramon, CA 94583
 E-mail: Mukesh@advanilaw.net
 (925) 480-7588

E. Entire Agreement and Amendments. This Agreement, including exhibits, constitutes the entire agreement and understanding between and among the 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 Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to 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
WASHINGTON MUTUAL BANK

Date: April 16, 2024

BY:

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TITLE:

PRINT NAME: J.S. Tonkinson

Date: 4-17-24

CAL COAST FINANCIAL CORPORATION

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BY:

TITLE: Chief Executive Officer

PRINT NAME: Roger Bakshi

EXHIBIT A

MARK MIGDAL & HAYDEN

PAUL A. LEVIN (CA State Bar No. 229077)
LAUREN M. GIBBS (CA State Bar No. 251569)
11150 Santa Monica Blvd., Suite 1670
Los Angeles, California 90025
Telephone: (305) 374-0440
e-mail: paul@markmigdal.com
lauren@markmigdal.com

**FEDERAL DEPOSIT INSURANCE
CORPORATION**

STUART TONKINSON
3501 Fairfax Drive
Arlington, VA 22226
Telephone: (7214) 673-7549
e-mail: jtonkinson@fdic.gov

Co-Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

CAL COAST FINANCIAL
CORPORATION,

Defendant.

Case No. 8:23-cv-1458-DMG-ADS

**STIPULATION AND JOINT MOTION TO
DISMISS WITH PREJUDICE
PURSUANT TO FED.R. CIV.P. 41**

Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Federal
Deposit Insurance Corporation as Receiver for Washington Mutual Bank

JOINT MOTION TO DISMISS

1 and Defendant Cal Coast Financial Corporation agree to and jointly
2 move for entry of an order dismissing this case with prejudice, with each
3 party to bear its own costs.

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5
6 WE SO MOVE

WE SO MOVE

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8 _____
9 Counsel for Plaintiff

Counsel for Defendant

10 Pursuant to Civil L.R. 5-4.3.4(a)(2)(i), the filer attests that all other
11 signatories listed, and on whose behalf this filing is submitted, concur in
12 the filing's content and have authorized the filing.

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14 By: _____

15 Stuart Tonkinson
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EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

CAL COAST FINANCIAL CORP.,

Defendant.

Case No. 8:23-cv-1458-DMG-ADS

**ORDER GRANTING STIPULATION AND
JOINT MOTION TO DISMISS WITH
PREJUDICE PURSUANT TO FED.R.
CIV.P. 41**

Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank and Defendant Cal Coast Financial Corporation have agreed to and jointly moved for entry of an order dismissing this case with prejudice.

ORDER

1 For the aforementioned reasons, this case is DISMISSED with
2 prejudice, each party to bear its/their own costs and attorneys' fees.
3 **It is SO ORDERED.**

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U.S. District Judge
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