

SETTLEMENT AND RELEASE AGREEMENT

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

Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank (“FDIC-R”), Mortgage Management Consultants, Inc. (“MMC”) (individually, FDIC-R and MMC may be referred to herein as “Party” and collectively as the “Parties”). This Settlement 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 Nevada. In July 2006, WaMu became the successor in interest to Long Beach Mortgage Company.

On September 25, 2008, the Office of Thrift Supervision closed WaMu 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 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 WaMu’s claims, demands, and causes of action against mortgage brokers.

On August 16, 2023, the FDIC-R filed a complaint for money damages against MMC. Those claims for damages are now pending in the United States District Court for the Central District of California in *FDIC-R v. MMC*, No. 8:23-cv-01522 (“Action”). MMC has denied liability in the Action; 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, MMC shall pay the FDIC-R the sum of Nine Hundred Sixty-Five Thousand Dollars (\$965,000.00) (“the Settlement Payment”) in the following two installments:

1. Fifty Thousand Dollars (\$50,000.00) to be paid on or before thirty (30) calendar days following the Effective Date; and

2. Nine Hundred Fifteen Thousand Dollars (\$915,000.00) to be paid on or before one hundred twenty (120) calendar days following the Effective Date.

The Settlement Payment shall constitute a debt due and owing the 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 the FDIC-R.

B. MMC shall deliver the Settlement Payment to the FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number to be provided by the FDIC-R, within three business days of the Effective Date.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then MMC shall be in default of its payment obligations (“Default”) and interest shall accrue 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 (i.e. unpaid amount of Settlement Payment together with all accrued interest) until paid in full, and the FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the Settlement Payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above; or

2. Enforce this Agreement, including without limitation, by FDIC-R’s motion to summarily enforce the agreed-upon settlement by the Court entering judgment against MMC for breach of the settlement agreement in the amount of the unpaid total (i.e. unpaid

amount of Settlement Payment together with all accrued interest) together with the costs of collection and all of the FDIC-R's **reasonable attorney's fees and costs** incurred in enforcing the terms of this Agreement. In such event, MMC waives and covenants not to plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever except the defense of payment of the Settlement Payment, in part or in full, to an action or motion to enforce this Agreement and agree to exclusive jurisdiction and venue in United States District Court for the Central District of California or

3. Terminate the Agreement by declaring it null and void, move to vacate any dismissal order, to which MMC agrees to consent, and re-institute an action on the FDIC-R's claims. MMC further agrees to waive and covenant to not plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever that did not exist or was otherwise unavailable as of the Effective Date, except the defense of payment of the Settlement Payment, in part or in full; and/or

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

Any decision by the 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 the FDIC-R to accept a portion of the Settlement Payment, and any 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.1 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full; provided, however, that in the event the FDIC-R terminates this Agreement by declaring it null and void, the FDIC-R will return to MMC any and all amounts paid to the FDIC-R under this Settlement Agreement.

SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the Action.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges MMC and their 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 the FDIC-R, that arise from or relate to MMC's **mortgage broker activities for WaMu.**

B. MMC's Reciprocal Release.

Effective simultaneously with the release granted in Section III.A. above, MMC, on behalf of itself individually, and respective parents, subsidiaries, and affiliates, and their respective 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 MMC's **mortgage broker activities for WaMu.**

C. Waiver of California Civil Code § 1542.

Each Party hereby waives and relinquishes any rights each may have under California Code § 1542, 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 C in this Agreement was a material and separately bargained-for element of this Agreement. The Parties further acknowledge that the releases granted herein are specific releases limited to those claims released in III.A-C, not general releases.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, Federal Deposit Insurance Corporation, 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 MMC 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, excluding for avoidance of **doubt any claims that arise from or relate to MMC's mortgage broker activities for WaMu;**
 - b. by the 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.
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, 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 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, she, 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 her counsel.

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

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.

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 the FDIC-R:

John V. Church
Federal Deposit Insurance Corporation
3501 Fairfax Drive
Arlington, VA 22226
(904) 302-2706
JChurch@fdic.gov

If to MMC:

Christine C. Lyden
LYDEN LAW CORPORATION
6320 Canoga Avenue, Suite 1400
Woodland Hills, CA 91367
(818) 888-8866
clyden@lydenlawcorp.com

E. Entire Agreement and Amendments. This Agreement, including Exhibits,

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 WASHINGTON MUTUAL BANK

Date: _____

BY: _____ JOHN
TITLE: Counsel CHURCH
PRINT NAME: John V. Church

Digitally signed by JOHN
CHURCH
Date: 2024.06.30
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Date: 6/27/24

MORTGAGE

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C.

BY: _____
TITLE: PRESIDENT
PRINT NAME: KENNETH J. SHAW

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EXHIBIT A

MARK MIGDAL & HAYDEN

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MORTGAGE RECOVERY LAW GROUP, LLP

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Attorneys for Plaintiff, Federal Deposit Insurance
Corporation as Receiver for Washington Mutual
Bank

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

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

MORTGAGE MANAGEMENT
CONSULTANTS, INC.,

Defendant.

CASE NO. 8:23-cv-01522-FWS-KES

**JOINT STIPULATION TO DISMISS
CASE WITH PREJUDICE**

**[PROPOSED] ORDER FILED
CONCURRENTLY**

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Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank and Defendant Mortgage Management Consultants, Inc. hereby stipulate pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), that this action be dismissed with prejudice as to all claims, cause of actions, and parties, with each party bearing that party's own attorney's fees and costs.

Respectfully submitted,

Dated: _____, 2024

MORTGAGE RECOVERY LAW GROUP,
LLP

MICHAEL H. DELBICK
Attorneys for Plaintiff, Federal Deposit
Insurance Corporation as Receiver for
Washington Mutual Bank

Dated: _____, 2024

LYDEN LAW CORPORATION

CHRISTINE C. LYDEN
Attorneys for Mortgage Management
Consultants, Inc.

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

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MARK MIGDAL & HAYDEN
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Attorneys for Plaintiff, Federal Deposit Insurance
Corporation as Receiver for Washington Mutual
Bank

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

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

MORTGAGE MANAGEMENT
CONSULTANTS, INC.,

Defendant.

CASE NO. 8:23-cv-01522-FWS-KES

**[PROPOSED] ORDER TO DISMISS
CASE WITH PREJUDICE**

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Pursuant to the stipulation of the parties under Federal Rule of Civil Procedure 41(a)(1)(A)(ii), IT IS ORDERED THAT THIS ACTION BE, AND HEREBY IS, DIMISSED WITH PREJUDICE as to all claims, causes of action, and parties, with each party bearing that party's own attorney's fees and costs.

IT IS SO ORDERED.

Date: _____

HON. FRED W. SLAUGHTER
UNITED STATES DISTRICT JUDGE