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DIK/Mortgage Fraud

ENTERED
12/30/09

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release ("Agreement") is entered into as of September 1, 2009 by and between THE FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A. (the "FDIC"), HERBERT CUESTA ("Cuesta"), and Defendant JEFFREY R. VAGG ("Vagg"), an individual. All aforementioned people/entities are referred to individually as a "Party" or collectively as the "Parties" in this Agreement:

1. Recitals:

1.1 In or about July 2006, the FDIC's predecessor in interest, Downey Savings and Loan Association, F.A. ("Downey"), approved and made a home mortgage loan (the "Loan") to James and Maureen Hagar. The loan was secured by the Hagars' primary residence located at 6829 Hazel Avenue, Orangevale, California 95662 (the "Property").

1.2 Vagg is, and at all times relevant hereto was, a professional real estate appraiser licensed by the State of California. In or about June 2006, Vagg performed an appraisal of the Property and prepared an appraisal report. The appraisal report was used in the underwriting analysis utilized by Downey in approving the Loan.

1.3 In or about May 2007, the Loan went into default. Downey thereafter foreclosed. On or about May 7, 2008, Downey filed an action against the Hagars, Vagg, and U.S. Financial Services, Inc. in the Orange County Superior Court (the "Court") entitled *Downey Savings and Loan Association, F.A. v. Jeffrey R. Vagg, et al.* and identified as Orange County Superior Court Case No. 30-2008-00106390 (the "Action"), asserting causes of action for breach of contract, fraud, negligence, and breach of fiduciary duty.

1.4 On or about April 14, 2009, Vagg filed an Answer to Downey's complaint and a cross-complaint (the "Cross-Action") against the Hagars, Downey, U.S. Financial Services, Inc., and former Downey employee Herbert Cuesta ("Cuesta") for indemnity, negligence, fraud, and unfair business practices, among other claims.

1.5 In or about November 2008, the FDIC was appointed to act as receiver for Downey and succeeded to Downey's rights in connection with the Loan, the Property, the Action, and the Cross-Action.

1.6 The purpose of this Agreement is to resolve all current disputes between the Parties hereto arising out of or related to the Loan, the Property, the Action, and the Cross-Action.

2. Agreement: The Parties hereby agree as follows:

2.1 No Admission of Liability. It is understood and agreed that by entering into this Agreement, no Party is admitting any liability to any other Party, and neither the fact of nor execution of this Agreement shall be used or commented upon by any Party as evidence of

any admission of liability.

2.2 Payment to the FDIC. Upon execution of this Agreement by the FDIC and Cuesta, Vagg agrees to pay to the FDIC the sum of twelve-thousand-five-hundred dollars (\$12,500.00). Such payment will be tendered to the FDIC's undersigned counsel of record within thirty (30) days after Vagg's counsel receives a copy of this Agreement signed by the FDIC and Cuesta.

2.3 Dismissal as to Vagg. The FDIC will dismiss its complaint in the Action with prejudice as against Vagg. The FDIC's counsel shall deliver to Vagg, in care of his counsel, an executed Request for Dismissal of the complaint in the Action with prejudice as against Vagg. Vagg shall hold the Request for Dismissal unfiled and shall not file it with the Court until after remitting the payment to the FDIC as provided in paragraph 2.2 above.

2.4 Dismissal as to Cuesta. Immediately following the execution of this Agreement by the FDIC and Cuesta, Vagg shall dismiss the Cross-Action with prejudice. In consideration of this dismissal, Cuesta shall waive any claim against Vagg for defense costs and expenses.

2.5 Continuing Jurisdiction for Enforcement. The Parties agree that the Court may and shall retain jurisdiction to enforce this Agreement in accordance with California Code of Civil Procedure Section 664.6.

2.6 Fees and Costs. Each Party agrees to bear his, her or its own attorneys' fees and costs in connection with the Action, the Cross-Action, and the preparation of this Agreement.

3. Releases:

3.1 Mutual General Release. Except with respect to the obligations, representations and warranties set forth in this Agreement, the FDIC and Cuesta, on the one hand, and Vagg, on the other hand, hereby generally release, remise and forever discharge each other, including each others' heirs, successors and assigns, attorneys, insurers, agents and representatives of each other, from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs or expenses (including but not limited to attorneys' fees), of any nature whatsoever, whether known or unknown, fixed or contingent, based upon or arising out of any of the facts, circumstances and/or transactions underlying the claims set forth in the Action or the Cross-Action. This release includes all claims, or potential claims, arising out of or relating to the Loan and the Property, only, and does not release any claims or potential claims arising out of or relating to other loans, other properties or other appraisal reports.

3.2 THE PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED BY THEIR RESPECTIVE LEGAL COUNSEL AND ARE FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES 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."

BEING AWARE OF SAID CODE SECTION, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE THEREUNDER, ANY AND ALL RIGHTS THEY MAY HAVE THEREUNDER WITH REGARD TO THE LOAN OR THE PROPERTY, AS WELL AS ANY AND ALL RIGHTS THEY MAY HAVE BY REASON OF OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

4. Miscellaneous:

4.1 Investigation. Each Party has made such investigation of the facts pertaining to this Agreement and of all the matters pertaining thereto as such Party deems necessary.

4.2 Independent Legal Advice. In executing this Agreement, the Parties have relied solely upon their own judgment, belief and knowledge and, to the extent they believe it is necessary, have sought the advice and recommendations of their own independently selected counsel concerning the nature, extent and duration of their rights and claims relating thereto, the rights affected by this Agreement, the form and content of this Agreement, and the advisability of entering into and executing this Agreement.

4.3 No Reliance. Except for statements, representations and promises expressly set forth in this Agreement, none of the Parties has relied upon any statement, representation or promise of any other Party (or of any employee, attorney or other representative of any other Party) in executing this Agreement, and no other Party has made any statements, representations or promises regarding a fact relied upon by it in entering into this Agreement.

4.4 Voluntary Execution. Each Party acknowledges and warrants that his, her or its execution of this Agreement is free and voluntary.

4.5 Read/Understands. Each Party and/or its responsible agent has read this Agreement and understands the contents thereof.

4.6 Full Authority/No Prior Assignment. The Parties represent and warrant that they each have the full right and authority to enter into this Agreement, and, to the extent applicable, the individual executing this Agreement on behalf of each of them has the full right and authority to do so, and to commit and bind them to this Agreement. The Parties represent and warrant that they have made no prior assignment of the claims released herein. Each Party (the "Indemnitor") further agrees to indemnify the other Parties (the "Indemnitees"), and shall hold the Indemnitees harmless from and against: (a) any and all liabilities, claims, demands, actions, causes of action or rights which have been assigned or transferred by the Indemnitor

contrary to the foregoing representations and warranties; and (b) any and all loss, expense, claim, demand or liability arising out of any breach of the foregoing warranties by the Indemnitor.

4.7 Later Discovery of Facts. The Parties understand that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the matters that are the subject of this Agreement, and they hereby agree that the releases and agreements contained in this Agreement shall be and will remain effective in all respects notwithstanding such different or additional facts.

4.8 Prior Agreements. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. There are no agreements, representations, warranties, or statements, whether oral or in writing, with respect to the subject matter of this Agreement, except as expressly set forth herein.

4.9 Drafting. All Parties have cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, it shall not be construed against any Party.

4.10 Attorneys' Fees. The prevailing party in any dispute related to this Agreement shall be entitled to recover all actual/reasonable attorneys' fees and costs, in addition to any other relief to which that party may be entitled.

4.11 Amendments. This Agreement may be amended or modified only by a writing, signed by the Party against whom enforcement is sought. No modification, amendment or waiver of any of the terms and conditions of this Agreement, and no future representation, warranty, promise, or condition in connection with the subject matter of this Agreement, shall be binding or effective for any purpose unless expressed in writing and signed by the Party to be bound by the modification or waiver, and any such modification, amendment or waiver shall be effective only in the specific instance and for the specific purpose given.

4.12 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns.

4.13 California Law. This Agreement is subject to and shall be interpreted pursuant to the substantive laws of the State of California.

4.14 Provisions Severable. If any term or provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining terms and provisions of this Agreement shall remain in full force and effect.

4.15 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement binding upon all of the Parties hereto. Signatures to this Agreement may be communicated and delivered by facsimile transmission.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below, effective as of the date first set forth above.

THE FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A.

(b)(6)

Dated: November 17, 2009

By: 
Kevin Whelan
Its: Counsel / Section Chief

Dated: November __, 2009

HERBERT CUESTA, as an individual

Dated: November __, 2009

JEFFREY R. VAGG, as an individual

APPROVED AS TO FORM AND CONTENT:

Dated: November __, 2009

LAW OFFICES OF JAMES M. FRASER

By: _____
Mark Buehler, Esq.
Attorneys for Defendant and Cross-complainant
JEFFREY R. VAGG

Dated: November __, 2009

ROBERTSON + THOMMARSON, LLP

By: _____
Ronald J. Thommarson, Esq.
Attorneys for Plaintiff and Cross-defendant
THE FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(4)



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THE FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A.

Dated: November __, 2009

By: _____

Its: _____

(b)(4)

Dated: November 18, 2009

[Redacted Signature Box]

HERBERT CUESTA, as an individual

Dated: November __, 2009

JEFFREY R. VAGG, as an individual

APPROVED AS TO FORM AND CONTENT:

Dated: November __, 2009

LAW OFFICES OF JAMES M. FRASER

By: _____

Mark Buehler, Esq.
Attorneys for Defendant and Cross-complainant
JEFFREY R. VAGG

Dated: November __, 2009

ROBERTSON + THOMMARSON, LLP

By: _____

Ronald J. Thommarson, Esq.
Attorneys for Plaintiff and Cross-defendant
THE FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(4)

[Redacted Signature Box]

11-18-2009 11:03 From: LAW OFFICE OF JAMES FRASER
11/17/2009 10:33 FAX 714-65-2182

ROBERTSON+THOMMARSON,LLP

T-885 P.002/002 F-877
001/001

Dated: November __, 2009

HERBERT CUESTA, as an individual

(b)(6)

Dated: November 18, 2009

JEFFREY R. VAGG, as an individual

APPROVED AS TO FORM AND CONTENT:

Dated: November 18, 2009

LAW OFFICES OF JAMES M. FRASER

(b)(6)

By: _____
Mark E. [redacted] Esq.
Attorneys for Defendant and Cross-complainant
JEFFREY R. VAGG

(b)(4)

Dated: November __, 2009

ROBERTSON + THOMMARSON, LLP

By: _____
Ronald J. Thommarson, Esq.
Attorneys for Plaintiff and Cross-defendant
THE FEDERAL DEPOSIT INSURANCE
CORPORATION

Dated: November __, 2009

MARSHACK HAYS, LLP

By: _____
Sean A. Kading, Esq.
Attorneys for Cross-defendant
HERBERT CUESTA

Received: 11-17-2009 10:33 From: [redacted]

To: LAW OFFICE OF JAMES Page 007

Received: 11-18-2009 10:28 From: [redacted]

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(b)(4)

(b)(4)

Dated: November __, 2009

HERBERT CUESTA, as an individual

Dated: November __, 2009

JEFFREY R. VAGG, as an individual

APPROVED AS TO FORM AND CONTENT:

Dated: November __, 2009

LAW OFFICES OF JAMES M. FRASER

By: _____
Mark Buehler, Esq.
Attorneys for Defendant and Cross-complainant
JEFFREY R. VAGG

Dated: November 18, 2009

ROBERTSON + THOMMARSON, LLP

(b)(6)
By: _____
Ronald J. Thommarson, Esq.
Attorneys for Plaintiff and Cross-defendant
THE FEDERAL DEPOSIT INSURANCE
CORPORATION

Dated: November __, 2009

MARSHACK HAYS, LLP

By: _____
Sean A. Kading, Esq.
Attorneys for Cross-defendant
HERBERT CUESTA

Dated: November 18, 2009

MARSHACK HAYS, LLP

(b)(6)

By

Sean A. Kading, Esq.
Attorneys for Cross-defendant
HERBERT CUESTA

(b)(4)

