

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this ^{3rd} day of ~~August~~ ^{September}, 2013, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for 1st Centennial Bank, (the "FDIC-R"), and James R. Appleton, Bruce J. Bartells, Carole H. Beswick, Larry F. Jacinto, Ronald J. Jeffrey, William A. McCalmon, Patrick J. Meyer, Stanley C. Weisser, Douglas F. Welebir, Thomas O. Vessey, John Lang and Clifford N. Schoonover (collectively the "Settling Defendants"). Individually, the FDIC-R and the Settling Defendants may be referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS:

Prior to January 23, 2009, 1st Centennial Bank ("Bank") was a depository institution organized and existing under the laws of the State of California.

On January 23, 2009, the Bank was closed by the California Department of Financial Institutions and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed as 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 any and all of the Bank's claims, demands, and causes of actions against its former directors, officers and employees arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of the Bank.

On August 25, 2011, the FDIC-R filed a First Amended Complaint for money damages against the Settling Defendants, who had each served at various times as directors and/or officers of the Bank. Those claims for damages are now pending in the United States District Court for the Central District of California in *FDIC as Receiver for 1st Centennial Bank v. Appleton, et al.*, Case No. CV-11-00476 (C.D. Cal.) (the "D&O Action"). The Settling Defendants have denied

liability in the D&O Action.

On August 8, 2013, an insurance company (the "D&O Carrier") and the Parties executed a Term Sheet.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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, the Settling Defendants and the D&O Carrier, collectively, agree to pay the FDIC-R the sum of SEVEN MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$7,250,000.00) (the "Settlement Funds"). The D&O Carrier shall pay \$6,500,000.00 and the Settling Defendants, jointly and severally, shall collectively pay \$750,000.00. The Settlement Funds shall be received by the FDIC-R by no later than September 9, 2013.

B. The Settlement Funds shall be delivered to FDIC-R by direct wire transfer to the following account.

BANK: Federal Home Loan Bank of New York, Main Office, 101 Park Avenue, New York, New York 10178-0599. (212) 681-6000 (telephone); 212-441-6890 (facsimile).

(b)(4) **ROUTING NUMBER:**

FOR CREDIT TO: FDIC National Liquidation Account, Account # (b)(4)

OBI: 1st Centennial Bank, Redlands, California (FIN 10030); Professional Liability (37100) DIF Fund; Contact - Gregory K. Conway (703) 516-1279.

C. In the event that the Settlement Funds payable by the Settling Defendants are not received by the FDIC-R by September 9, 2013, interest shall accrue on the unpaid amount at the rate of 5 percent per annum from September 9, 2013 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R by September 9, 2013, as a result of the FDIC-

R's failure to execute this Agreement, no interest shall accrue until three days after the FDIC-R executes the Agreement.

D. In the event that the Settlement Funds payable by the D&O Carrier are not received by the FDIC-R on or before September 9, 2013, then the FDIC-R may declare this Agreement null and void, and may pursue all remedies against the D&O Carrier and the Settling Defendants, including, among other things, enforcing the August 8, 2013 Term Sheet. In the event that the Settlement Funds payable by the Settling Defendants are not received by the FDIC-R on or before September 9, 2013, then, with respect to any Settling Defendant that fails to deliver his or her share of the Settlement Funds only, the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of such Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives such Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against the Settling Defendants failing to deliver their share of the Settlement Funds, in which event the non-delivering Settling Defendant agrees to jurisdiction in the United States District Court for the Central District of California and agrees to pay all of the FDIC-R's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void with respect to the non-delivering Settling Defendant, at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement.

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus any accrued interest, the FDIC-R shall within three days file a dismissal of the D&O Action with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1), with each Party to bear its own costs as these were originally incurred.

SECTION III: Releases

A. Release of the Settling Defendants by FDIC-R.

Effective upon receipt in full of the Settlement Funds and the dismissal described in Sections I. and II. above, and except as provided in Paragraph III.C. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, 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 the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including, without limitation, the causes of action alleged in the D&O Action.

B. Release of FDIC-R by the Settling Defendants.

Effective simultaneously with the release granted in Paragraph III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, 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, that arise from or relate to the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank or that arise from or relate to the Policy, including, without limitation, the causes of action alleged in the D&O Action.

C. Express Reservations from Releases by FDIC-R.

1. Notwithstanding any other provision, by this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

a. against the Settling 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 claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than Bank;

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

c. which are not expressly released in Paragraphs III.A. above.

2. Notwithstanding any other provision, 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 and/or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action, which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the Central District of California or any other federal judicial district. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et. seq.*, if appropriate.

D. Cal. Civ. Code Section 1542

The Parties agree that the releases provided in this Agreement include and encompass a release and waiver of any and all rights or benefits conferred by provisions of Section 1542 of

the California Civil Code and/or any other federal statute or common law principle of similar effect. In connection with this waiver, the Parties hereby acknowledge that they are aware that they may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist with respect to the subject matter of this Agreement. The Parties acknowledge that they have been advised by counsel and are familiar with the provisions of Section 1542 of the California Civil Code, 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.

SECTION IV: Waiver of Dividends and Litigation Proceeds

To the extent, if any, that Settling Defendants are or were creditors or shareholders of the Bank and/or 1st Centennial Bancorp and by virtue thereof are or may have been entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or any proceeds in any litigation that has or could have been brought 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, FHLBB, OTS, RTC, FSLIC Resolution Fund or the United States Government in connection with the Bank or its receivership, they hereby knowingly assign to the FDIC-R any and all rights, titles and interest in and to any and all such dividends, payments or other distributions, or such proceeds.

SECTION V: Representations and Acknowledgements

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 that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. **Execution in Counterparts.** This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall

together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, including delivery of any counterpart by facsimile or email, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all Parties to this Agreement.

C. **Binding Effect.** Each of the undersigned persons represents and warrants that they are a Party 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, administrators, representatives, successors and assigns.

D. **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 California.

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. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. **Reasonable Cooperation.** The undersigned 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 D&O Action, and to otherwise perform the terms of this Agreement.

G. **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.

H. **Agreement Not Confidential.** Pursuant to 12 U.S.C. § 1821(s), this Agreement cannot be and shall not be deemed to be confidential.

I. **Defendants' Financial Statements.** Within 3 days of the filing of the dismissal of the D&O Action, outside counsel for the FDIC-R will return to counsel for the Settling Defendants the original and all copies in their possession of the financial information forms provided by the Settling Defendants, but nothing in this Agreement shall require the FDIC-R to return personal financial disclosure forms provided by the Settling Defendants in its possession.

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 1ST CENTENNIAL BANK**

Date: **09/13/2008**

BY: _____

[Redacted Signature Box]

(b)(6)

TITLE: Counsel

PRINT NAME: Gregory K. Conway

SETTLING DEFENDANTS

Date: _____

James R. Appleton

Date: _____

Bruce J. Bartells

Date: _____

Carole H. Beswick

Date: _____

Larry F. Jacinto

Date: _____

Ronald J. Jeffrey

Date: _____

William A. McCalmon

Date: _____

Patrick J. Meyer

Date: _____

Stanley C. Weisser

Date: _____

Douglas F. Welebir

Date: _____

Thomas O. Vessey

Date: _____

John Lang

Date: _____

Clifford N. Schoonover

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**FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR 1ST CENTENNIAL BANK**

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

SETTLING DEFENDANTS

Date: August 29, 2013

James R. Appleton

Date: _____

Bruce J. Bartells

Date: _____

Carole H. Beswick

Date: _____

Larry F. Jacinto

Date: _____

Ronald J. Jeffrey

(b)(6)

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**FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR 1ST CENTENNIAL BANK**

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

SETTLING DEFENDANTS

Date: _____

James R. Appleton

Date: 8/27/13

Bruce J. Bartells

Date: _____

Carole H. Beswick

Date: _____

Larry F. Jacinto

Date: _____

Ronald J. Jeffrey

(b)(6)

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**FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR 1ST CENTENNIAL BANK**

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

SETTLING DEFENDANTS

Date: _____

James R. Appleton

Date: _____

Bruce J. Bartells

Date: 8-30-13

(b)(6) _____
Carole H. Beswick

Date: _____

Larry F. Jacinto

Date: _____

Ronald J. Jeffrey

Date: _____

Carole H. Beswick

(b)(6)

Date: Aug 29, 2013



Larry F. Jacinto

Date: _____

Ronald J. Jeffrey

Date: _____

William A. McCalmon

Date: _____

Patrick J. Meyer

Date: _____

Stanley C. Weisser

Date: _____

Douglas F. Welebir

Date: _____

Thomas O. Vessey

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AS RECEIVER FOR 1ST CENTENNIAL BANK**

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: Gregory K. Conway

SETTLING DEFENDANTS

Date: _____

James R. Appleton

Date: _____

Bruce J. Bartells

Date: _____

Carole H. Beswick

Date: _____

Larry F. Jacinto

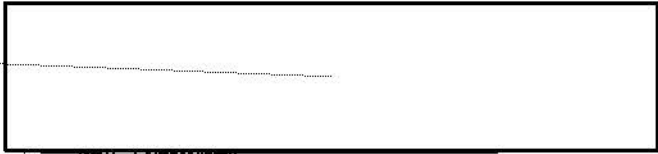
Date: 8-30-13



Ronald J. Jeffrey

(b)(6)

(b)(6)



Date: 8-30-13

William A. McCalmon

Date: _____

Patrick J. Meyer

Date: _____

Stanley C. Weisser

Date: _____

Douglas F. Welebir

Date: _____

Thomas O. Vessey

Date: _____

John Lang

Date: _____

Clifford N. Schoonover

Date: _____

William A. McCalmon



Date: 8-30-2013

Patrick J. Meyer

Date: _____

Stanley C. Weisser

Date: _____

Douglas F. Welebir

Date: _____

Thomas O. Vessey

Date: _____

John Lang

Date: _____

Clifford N. Schoonover

(b)(6)

Date: _____

William A. McCalmon

Date: _____

Patrick J. Meyer

(b)(6)

Date: 8/30/13

[Redacted]

~~Stanley C. Weisser~~

Date: _____

Douglas F. Welebir

Date: _____

Thomas O. Vessey

Date: _____

John Lang

Date: _____

Clifford N. Schoonover

(b)(6)

(b)(6)

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[Redacted]

[Redacted]

Date: _____

William A. McCalmon

Date: _____

Patrick J. Meyer

Date: _____

Stanley C. Weisser

(b)(6)

Date: 8/29/13



Douglas F. Welebir

Date: _____

Thomas O. Vessey

Date: _____

John Lang

Date: _____

Clifford N. Schoonover

Date: _____

William A. McCalmon

Date: _____

Patrick J. Meyer

Date: _____

Stanley C. Weisser

Date: _____

Douglas F. Welbir

(b)(6)

Date: 8.30.13

Thomas O. Vessey

Date: _____

John Lang

Date: _____

Clifford N. Schoonover

Date: _____

William A. McCalmon

Date: _____

Patrick J. Meyer

Date: _____

Stanley C. Weisser

Date: _____

Douglas F. Welebir

Date: _____

Thomas O. Vessey

(b)(6)

Date: 9/4/2013



John Lang

Date: _____

Clifford N. Schoonover

Date: _____

William A. McCalmon

Date: _____

Patrick J. Meyer

Date: _____

Stanley C. Weisser

Date: _____

Douglas F. Welebir

Date: _____

Thomas O. Vessey

Date: _____

John Lang

(b)(6)

Date: *August 30, 2013*



Clifford N. Schoonover