

SETTLEMENT AND RELEASE AGREEMENT

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

The Federal Deposit Insurance Corporation as Receiver for First Bank of Beverly Hills ("FDIC-R"), and Larry B. Faigin, Craig Kolasinski, Eric Rosa, Annette Vecchio, Howard Amster, William D. King, Stephen Glennon, Robert Kanner, Kathleen Kellogg, and John Larman (collectively, the "Settling Defendants") (the FDIC-R and the Settling Defendants may be referred to individually herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to April 24, 2009, First Bank of Beverly Hills (the "Bank") was a depository institution organized and existing under the laws of California;

On April 24, 2009, the California Department of Financial Institutions closed the Bank 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 the Bank's claims, demands, and causes of action 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, officers, and employees of the Bank;

On April 20, 2012, The FDIC-R filed suit against the Settling Defendants for negligence, gross negligence, and breach of fiduciary duty in connection with each Settling Defendant's role as a director and/or officer of the Bank, in an action pending in the United States District Court

for the Central District of California captioned *FDIC v Faigin, et al.*, Case No. 12-cv-03448-DDP-CW (the "FDIC-R Action");

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of 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 the FDIC-R

A. The consideration to be paid by the Settling Defendants or on their behalf, and to be received by the FDIC-R in this settlement, is \$14.7 million. The aggregate amount is to be comprised of the following:

1. Settlement Payment.

As an essential covenant and condition to this Agreement, the Settling Defendants, collectively and not severally, agree to pay the FDIC-R the sum of Thirteen Million Seven Hundred Thousand Dollars and 00/100 Cents (\$13,700,000.00) (the "Settlement Payment"), at least Ten Million Dollars and 00/100 Cents (\$10,000,000.00) of which will be from the personal assets of the Settling Defendants.

2. Escrow Payment.

In addition, the Settling Defendants agree to turn over to the FDIC-R One Million Dollars and 00/100 Cents (\$1,000,000.00) from an escrow account ("Escrow Payment") established in the bankruptcy proceeding of the Bank's holding company, Beverly Hills Bancorp, Inc. ("BHBC"), captioned *In re Beverly Hills Bancorp Inc.*, Case No. 14-10897 (KJC), pending in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Action"). The

disposition of the escrow account is the subject of an agreement between the Settling Defendants, the Trustee, and creditors in that proceeding. The Chapter 11 Plan of Reorganization allowing the Escrow Payment was approved by the Bankruptcy Court on November 20, 2014.

B. The Settlement Payment shall be delivered to the FDIC-R by direct wire transfer into an account designated by the FDIC-R by notice to counsel for the Settling Defendants. The personal contribution portion of the Settlement Payment shall be delivered no later than December 30, 2014. The remaining \$3.7 million of the Settlement Payment shall be delivered no later than January 23, 2015. The Escrow Payment shall be delivered to the FDIC-R by direct wire transfer into the same account no later than January 31, 2015. The Settling Defendants will use their best efforts to deliver these funds earlier.

C. If the FDIC-R does not receive the Settlement Payment and/or the Escrow Payment by the payment dates determined by Section I.B. above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of said payments in full (including all interest accrued under Section I.C.1 of this Agreement) to:

1. Extend the period of time for any payment, including interest accruing from the date determined by Section I.B. above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or
2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in United States District Court for the Central District of California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or
3. Terminate the Agreement, move to vacate any dismissal order, to which

the Settling Defendants agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and to waive all objections, defenses, claims, or counterclaims, and covenant and agree not to assert any objections, defenses, claims, or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

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

Any extension of time under Section I.C.1 for delivery of any payment required by Section 1.A or acceptance of a partial payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Sections I.C.2 through I.C.4 at any time prior to receipt of the Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation of Dismissal with Prejudice

Within ten (10) calendar days after receipt of the Settlement Payment and Escrow Payment (plus any interest accrued under Section I.C.1), the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for the Parties in the form attached hereto as Exhibit A, in the FDIC-R Action.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment and Escrow Payment in full, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants and their respective lawful heirs, executors, trustees, administrators, representatives, insurers, 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 FDIC-R Action.

B. The Settling Defendants' Release.

Effective simultaneously with the release granted in Section III.A. above, each of the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, insurers, 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 the Bank, the FDIC-R Action, 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.

C. Release by Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Sections III.A. and III.B. above, the Settling Defendants and their respective heirs, executors, administrators, representatives, successors, agents, affiliates, attorneys, officers, and assigns, hereby release and discharge each other 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 performance, nonperformance, or manner of performance of their respective functions, duties, and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the FDIC-R Action.

D. Exceptions from Releases by the FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R 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 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 such claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank; and

b. Against any person or entity not expressly released by the 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 the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute or continue 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, including the continuation of the proceeding captioned *In the Matter of Larry R. Faigin and John J. Lannan, Individually, and as Former Institution-Affiliated Parties of First Bank of Beverly Hills, Calabasas, CA (Insured State Nonmember Bank In Receivership)*, FDIC-11-269E, FDIC-11-270I, FDIC-11-252E, FDIC-11-254IS.

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, the 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.

F. Release and Waiver of Rights Under Cal. Civ. Code Section 1542.

With respect to the matters released herein, the Parties specifically acknowledge that they may hereafter discover facts in addition to or different from those which they now believe to be true with respect to the released matters, but agree that, after consulting with legal counsel, they have taken that possibility into account in reaching this Agreement, and that these releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts, as to which the Parties expressly assume the risk. After consulting with legal counsel, the Parties expressly and specifically stipulate and agree to waive and relinquish, to the fullest extent permitted by law, all provisions, rights, and benefits under California Civil Code Section 1542, or any similar provision or authority. That Section provides:

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.

The Parties are aware of the contents of California Civil Code Section 1542, and understand and agree that this Section and the benefits thereof, if applicable, are hereby expressly waived. It is understood and agreed that the releases of the Parties shall apply to all unknown, unanticipated, unsuspected, or undisclosed claims based on the Settling Defendants' actions or failures to act in their respective capacities as directors, officers, and/or employees of the Bank, as well as all known, anticipated, suspected, or disclosed claims released in Section III above.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or 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 in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, the Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, other distributions, or proceeds.

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 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, her, or its counsel.

C. Financial Disclosure Representation. Each Settling Defendant has submitted financial information to the FDIC-R including a signed Financial Disclosure Form and herein affirms that his/her financial information is true and accurate as of the date the Disclosure was submitted to the FDIC. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants. The FDIC-R has no

obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that existed as of the date the disclosure was submitted to the FDIC-R, that Settling Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of the Settling Defendant's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Defendant.

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 perform the terms of this Agreement.

SECTION VII: Other Matters

A. No Admission of Liability. The Settling Defendants expressly deny the claims asserted by the FDIC-R. 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. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. 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.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

(b)(6)	If to the FDIC-R: Kathleen M. Balderston, Esq. Nixon Peabody LLP 437 Madison Avenue New York, NY 10022 [Redacted]
(b)(6)	If to Larry B. Faigin, William D. King, Stephen Glennon, Robert Kanner, and Kathleen Kellogg: Larry Nagler, Esq. Nagler & Associates 2300 Sepulveda Blvd. Los Angeles, CA 90064 [Redacted]
(b)(6)	If to Howard Amster: Paul S. Pilecki, Esq. Kilpatrick Townsend & Stockton LLP 607 14 th Street, NW, Suite 900 Washington, DC 20005-2018 [Redacted]
(b)(6)	If to Craig Kolasinski: Andrew Esbenshade, Esq. Caldwell Leslie & Proctor, PC 725 S. Figueroa Street, 31 st Floor Los Angeles, CA 90027 [Redacted]
(b)(6)	If to Eric Rosa: Joel M. Athey, Esq. Holland & Knight LLP 400 South Hope Street, 8 th Floor Los Angeles, CA 90071 [Redacted]
(b)(6)	If to Annette Vecchio: John F. Libby, Esq. Manatt, Phelps & Phillips, LLP 11355 West Olympic Blvd. Los Angeles, CA 90064 [Redacted]
(b)(6)	If to John J. Annan: Peter McAndrews, Esq. McAndrews Allen & Matson, PC 3110 Main Street, Suite 210 Santa Monica, California 90405 [Redacted]

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 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 FIRST
BANK OF BEVERLY HILLS

By: (b)(6)

Title: Counsel - FDIC
Print Name: Wanda R. Butcher

Date: _____

Date: _____

LARRY B. FAIGIN

Date: _____

WILLIAM D. KING

Date: _____

STEPHEN GLENNON

Date: _____

ROBERT KANNER

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FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR FIRST
BANK OF BEVERLY HILLS

By: _____
Title: _____
Print Name: _____

(b)(6) _____
Date: _____

Date: _____

LARRY B. FAIGIN

Date: _____

WILLIAM D. KING

Date: _____

STEPHEN GLENNON

Date: _____

ROBERT KANNER

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FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR FIRST
BANK OF BEVERLY HILLS

By: _____
Title: _____
Print Name: _____

Date: _____

Date: _____

LARRY B. FAIGIN

(b)(6)

Date: 12/2/14

WILLIAM D. KING

Date: _____

STEPHEN GLENNON

Date: _____

ROBERT KANNER

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CORPORATION AS RECEIVER FOR FIRST
BANK OF BEVERLY HILLS

By: _____
Title: _____
Print Name: _____

Date: _____

Date: _____

LARRY B. FAIGIN

Date: _____

WILLIAM D. KING

(b)(6)

Date: 11/26/14

STEPHEN GLENNON

Date: _____

ROBERT KANNER

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FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR FIRST
BANK OF BEVERLY HILLS

By: _____
Title: _____
Print Name: _____

Date: _____

Date: _____

LARRY B. FAIGIN

Date: _____

WILLIAM D. KING

Date: _____

STEPHEN GLENNON

Date: 12/8/14

ROBERT KANNER

(b)(6)

(b)(6)

Date: 12/3/14



KATHLEEN KELLOGG

Date: _____

HOWARD AMSTER

Date: _____

CRAIG KOLASJNKI

Date: _____

ERIC ROSEN

Date: _____

ANNETTE VECCHIO

Date: _____

JOHN LANNAN

Date: _____

KATHLEEN KELLOGG

(b)(6)

Date: 11/27/2014



HOWARD AMSTER

Date: _____

CRAIG KOLASINKI

Date: _____

ERIC ROSEN

Date: _____

ANNETTE VECCHIO

Date: _____

JOHN LANNAN

Date: _____

KATHLEEN KELLOGG

Date: _____

HOWARD AMSTER

(b)(6)

Date: 12/1/14

CRAIG KOLESINKI

Date: _____

ERIC ROSEN

Date: _____

ANNETTE VECCIO

Date: _____

JOHN LANNAN

Date: _____

KATHLEEN KELLOGG

Date: _____

HOWARD AMSTER

Date: _____

CRAIG KOLASINKI

Date: Dec. 2, 2014

[Redacted]

(b)(6)

~~ERIC ROBIN~~ *ROSA*

Date: _____

ANNETTE VECCHIO

Date: _____

JOHN LANNAN

Date: _____

KATHLEEN KELLOGG

Date: _____

HOWARD AMSTER

Date: _____

CRAIG KOLASINKI

Date: _____

ERIC ROSEN

(b)(6)

Date: Dec. 1 2014



ANNETTE VECCHIO

Date: _____

JOHN LANNAN

Date: _____

KATHLEEN KELLOGG

Date: _____

HOWARD AMSTER

Date: _____

CRAIG KOLASINKI

Date: _____

ERIC ROSEN

Date: _____

ANNETTE VECCHIO

Date: 12-05-2014



(b)(6)

JOHN LANNAN