

## SETTLEMENT AND RELEASE AGREEMENT

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

The Plaintiff Federal Deposit Insurance Corporation as Receiver for First Regional Bank (“FDIC-R”), and Fred M. Edwards, H. Anthony Gartshore, Thomas E. McCullough, Carolyn Zarro Nicholson, Colleen O’Rourke Carson, Klaus Schilling, Richard E. Schreiber, Lawrence J. Sherman, Jack A. Sweeney, the estate of Marilyn J. Sweeney, and Steven J. Sweeney (collectively the “Settling Defendants”) and the estate of Gary M. Horgan, Elizabeth Thompson, David Hare, and Dexter Kodama (collectively, the “Non-Defendants”) (individually, the FDIC-R, the Settling Defendants, and the Non-Defendants may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

WHEREAS:

Prior to January 29, 2010, First Regional Bank (“Bank”) was a depository institution organized and existing under the laws of California;

On January 29, 2010, 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 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, officers, and employees of the Bank;

On January 28, 2014, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom served at various times as a director and/or officer of the Bank. Those claims for damages are now pending in the United States District Court for the Central District of California in *FDIC-R v. Edwards, et al.*, Docket No. CV14-0668 (“D&O

Action”). The Settling Defendants deny liability for the claims.

The FDIC-R did not name the Non-Defendants in the D&O Action.

Certain insurers of the Bank (“Insurers”) issued directors’ and officers’ liability policies for the period November 15, 2008 through November 15, 2009 and Extended Reporting Periods for the period November 15, 2009 to November 15, 2010 (the “Policies”), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policies. The Settling Defendants asserted claims for coverage under the Policies.

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: Payments to FDIC-R**

**A. As essential covenants and conditions to this Agreement:**

1. The Settling Defendants jointly and severally agree to cause certain Insurers to pay the FDIC-R the sum of \$11,900,000 on or before March 7, 2014; and
2. The Settling Defendants, jointly and severally, agree to pay the FDIC-R the additional sum of \$100,000 on or before March 7, 2014 (the payments referred to in this subparagraph and the preceding subparagraph may be referred to as the “Settlement Payments”); and
3. H. Anthony Gartshore agrees to assign to the FDIC-R receiver’s certificates for the Receivership for First Regional Bank in the following amounts on or before March 7, 2014:
  - i. \$662,566.41
  - ii. \$34,268.52; and
4. Thomas E. McCullough agrees to assign to the FDIC-R receiver’s certificates for the Receivership for First Regional Bank in the following amounts on or

before March 7, 2014:

i. \$55,304.48

ii. \$285,900.42

B. The Settlement Payments to the FDIC-R shall be made by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants. The FDIC-R shall provide all necessary payment instructions no later than five days after full execution of the Agreement.

In the event that the Settlement Payments are not delivered to the FDIC-R by March 7, 2014, interest shall accrue on all unpaid amounts at the rate of 5% per annum from March 7, 2014, until the date of payment, payable by the Parties responsible for making or causing the payments to be made. However, if said Settlement Payments are not delivered to the FDIC-R by March 7, 2014, as a result of the FDIC-R's failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R executes the Agreement.

C. If the FDIC-R does not receive the Settlement Payments in full on or before March 7, 2014, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payments in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payments; 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 against the Party or Parties who have failed to make payments and institute an action on the FDIC-R's claims. The Settling Defendants further agree to waive any statute of limitations that would bar any of the FDIC-R's claims and 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 the Settlement Payments or acceptance of a portion of the Settlement Payments shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payments (including all accrued interest) in full.

## **SECTION II: Stipulation and Dismissal**

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, (2) the assignment of all of the receiver's certificates referred to in Section I.A.3. and Section I.A.4. of this Agreement, and (3) receipt of the Settlement Payments, plus any accrued interest, the FDIC-R shall, if no defendant has filed an answer or motion for summary judgment, file a notice of dismissal with prejudice of the D&O Action. If any defendant has filed an answer or motion for summary judgment, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for the FDIC-R and the Settling Defendants.

## **SECTION III: Releases**

### **A. The FDIC-R's Releases.**

Upon receipt of the Settlement Payments in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. the Settling Defendants, the Non-Defendants, and their respective heirs, executors, trustees, 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' and Non-Defendants' respective functions, duties and actions as officers and/or directors of the Bank.

### **B. The Settling Defendants' and the Non-Defendants' Release.**

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants and the Non-Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, attorneys, 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 or to the performance, nonperformance, or manner of performance of the Settling Defendants' and the Non-Defendants' respective functions, duties and actions as officers and/or directors of the Bank.

C. Exceptions from Releases By 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, the Non-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 FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than 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 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, 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.

**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 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, the FDIC-R, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, 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, or 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, 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.

C. Release of Unknown Claims.

California Civil Code § 1542 states:

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 § 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 Settling Defendants and Non-Defendants herein shall apply to all unknown, unanticipated, unsuspected or undisclosed Claims based on the Settling Defendants' and Non-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. Nothing herein shall be construed to create a general release.

**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 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, that the undersigned parties expressly deny any such liability or infirmity, 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:

If to the FDIC-R:

L. Anthony Lehr  
Counsel, Federal Deposit Insurance Corporation  
3501 Fairfax Drive, # B-7008  
Arlington, Virginia 22226

and

Dennis S. Klein  
Hughes Hubbard & Reed LLP  
201 South Biscayne Boulevard  
Miami, FL 33131

If to Fred Edwards, H. Anthony Gartshore, Thomas McCullough, Richard Schreiber, Lawrence Sherman, Jack Sweeney, the Estate of Marilyn J. Sweeney, Steven Sweeney, Carolyn Zarro Nicholson, Elizabeth Thompson, and Dexter Kodama:

Michael J. Proctor  
Andrew Esbenshade  
Caldwell Leslie & Proctor, PC  
725 South Figueroa Street, 31st Floor  
Los Angeles, CA 90017

If to the Estate of Gary M. Horgan:

Art Coren  
Horgan, Rosen, Beckham & Coren, LLP  
23975 Park Sorrento, Suite 200  
Calabasas, CA 91302

If to Klaus Schilling or David Hare:

Mark A. Byrne  
Byrne & Nixon LLP  
888 West Sixth Street, Suite 1100  
Los Angeles, CA 90017

If to Colleen Carson:

Donna L. Wilson  
Manatt, Phelps & Phillips, LLP  
11355 Olympic Blvd.  
Los Angeles, CA 90064

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.

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 REGIONAL BANK

(b)(6) Date: 2-5-14

BY:

TITLE: Counsel

PRINT NAME: L. Anthony Lehr

Date: 1/28/14

(b)(6)

COLLEEN O'ROURKE CARSON, INDIVIDUALLY

[Redacted]

Date: 1-28-14

(b)(6)

FRED M. EDWARDS, INDIVIDUALLY

[Redacted]

Date: 1/27/14

(b)(6)

H. ANTHONY GARTSHORE, INDIVIDUALLY

[Redacted]

Date: Jan. 27, 2014

(b)(6)

THOMAS E. MCCULLOUGH, INDIVIDUALLY

[Redacted]

Date: 1/28/14

(b)(6)

KLAUS SCHILLING, INDIVIDUALLY

[Redacted]

Date: 1/28/14

(b)(6)

RICHARD E. SCHREIBER, INDIVIDUALLY

[Redacted]

Date: 1/27/14

(b)(6)

LAWRENCE J. SHERMAN, INDIVIDUALLY

[Redacted]

Date: 1/28/2014

(b)(6)

JACK A. SWEENEY

BY: [Redacted]

TITLE: Trustee of the Sweeney Family Trust

PRINT NAME: Steven J. Sweeney

(b)(6) Date: 1/28/2014

STEVEN J. SWEENEY, INDIVIDUALLY

[Redacted]

(b)(6) Date: 1/28/2014

ESTATE OF MARILYN SWEENEY

By: [Redacted]

*Marilyn Sweeney's Nominated and Appointed  
TITLE: EXECUTOR and Trustee of the Sweeney  
Family Trust  
PRINT NAME: Steven J. Sweeney*

(b)(6) Date: 1/28/14

CAROLYN ZARRO NICHOLSON INDIVIDUALLY

[Redacted]

Date: 2/3/14

(b)(6)

ESTATE OF GARY M. HORGAN

[Redacted]

TITLE: Sole beneficiary of the estate of Gary M. Horgan

PRINT NAME: MARY SUE Horgan

Date: 2-3-14

(b)(6)

DAVID HARE, INDIVIDUALLY

[Redacted]

Date: 1/31/14

(b)(6)

ELIZABETH THOMPSON, INDIVIDUALLY

[Redacted]

Date: 1/30/14

(b)(6)

DEXTER KODAMA, INDIVIDUALLY

[Redacted]