

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into on June 28, 2012 (the “Settlement Date”) by and between The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B. (“FDIC” or “Plaintiff”), on the one hand, and Jared Beschel, an individual and Jared W. Beschel, P.C. (collectively, “Beschel”), on the other hand. The FDIC and Beschel are referred to collectively as the “Parties.”

A. WHEREAS, there is a pending civil action by the FDIC against Beschel entitled “*Federal Deposit Insurance Corporation as Receiver of IndyMac Bank, F.S.B. v. Jared W. Beschel, individually and Jared W. Beschel, P.C.*”, pending in United States District Court, Eastern District of New York, Case No. 10-CV-3721 (the “Action”);

B. WHEREAS, without admitting liability, the Parties desire to resolve the FDIC’s claims against Beschel, including, but not limited to, all issues raised in the Action;

NOW, THEREFORE, in consideration of the undertakings contained in this agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble, Recitals and Exhibits. The foregoing preamble and recitals are true and correct and are integral parts of this agreement.

2. Settlement Payment. The entire settlement amount is Three Hundred Sixty Five Thousand Dollars (\$365,000) (“Settlement Amount”), payable in a lump sum to “FDIC as Receiver of IndyMac Bank, FSB” within 21 days of Beschel’s attorney’s receipt of the original Agreement signed by the FDIC.

3. Dismissal of the Action. Upon the execution of this Agreement and full payment of the Settlement Amount, the Parties, by their respective attorneys, shall execute and file only a

Stipulation of Dismissal with prejudice in the form attached hereto as Exhibit "A." The Parties agree that this Agreement shall not be filed with the Court except as provided for in Paragraph 12 below.

4. Release by Plaintiff. Plaintiff hereby releases and forever discharges Beschel and his current and former employees, independent contractors, officers, agents, sureties, bonding companies, insurers, attorneys, companies, successors, assigns and affiliates (collectively, the "Released Parties"), of and from any and all claims, and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of: (a) the claims or causes of action set forth in this Action; (b) the facts, occurrences and transactions alleged therein, including the subject loans and properties alleged in the Action, and (c) any other claims or causes of action Plaintiff may have against Beschel arising from other loans given by IndyMac Bank (collectively, the "Released Claims").

5. Express Reservations from Release by Plaintiff. Notwithstanding any other provision contained herein, by this agreement, Plaintiff does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims brought on behalf of another failed institution or another governmental entity. .

6. No Admission of Liability. Plaintiff acknowledges that this agreement does not constitute an admission by Beschel as to the merits of any claim that the FDIC or its predecessors in interest, including IndyMac, has asserted, or could have asserted, in the Action and that Beschel has denied and continues to deny that he has any liability to Plaintiff as alleged in the Action. Likewise, Beschel acknowledges that this agreement does not constitute an admission by Plaintiff that any asserted claim is or was in any way lacking in merit, and Beschel

also acknowledges that this agreement does not constitute an admission by Plaintiff as to the merits of any claim that Beschel has asserted, or could have asserted, in the Action. Nevertheless, Plaintiff and Beschel have concluded that continued litigation would be expensive and protracted and that it is desirable that the Action be settled fully and finally as between Plaintiff and Beschel in the manner and upon the terms and conditions set forth in this agreement.

7. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. Plaintiff and Beschel have received independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement and of giving the releases provided herein.
- b. In connection with the execution of this Agreement and the making of the settlement provided for herein, no Party to this Agreement has relied upon any statement, representation or promise of any other Party not expressly contained herein.
- c. This Agreement is fully integrated and contains the entire agreement of the Parties hereto. There are no agreements or understandings between the Parties hereto relating to the matters and releases referred to in this Agreement other than as set forth in this Agreement, and this Agreement supersedes and replaces any and all prior negotiations and agreements between the Parties hereto, whether written or oral.
- d. Plaintiff and Beschel have made such investigation of the facts pertaining to the releases contained herein as they deem necessary.

- e. The terms of this Agreement are contractual and are the result of negotiation among the Parties.
- f. This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This Agreement is signed freely by each Party executing it.
- g. The Parties have not assigned or transferred any of their claims being released herein.

8. No Press Release. Plaintiff agrees not to issue a press release, solicit or initiate contact with any news or media outlet about the settlement with Beschel, or to otherwise publicize any aspect of the settlement, unless Beschel publicizes the settlement first or as otherwise required to do so by law.

9. Consideration. The consideration received in connection with this Agreement consists only of the terms set forth in this Agreement.

10. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the Parties to be charged with such modification.

11. Agreement Binding on Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective officers, directors, joint venturers, partners, employees, agents, servants, heirs, administrators, executors, successors, representatives and assigns.

12. Applicable Law. This Agreement has been negotiated and exchanged in the State of New York. As such, this Agreement and all matters relating thereto shall be governed by the laws of the State of New York without regard to its principles of conflicts of law. In addition, in

the event of any disputes arising between the Parties out of this Agreement, the Parties agree that the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the Eastern District of New York. If a lawsuit is commenced to enforce this Agreement, the Party seeking to enforce the Agreement shall make all reasonable attempts to file this Agreement under seal.

13. Execution and Delivery Required – Effective Date. This instrument shall not be considered to be the Agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the “Effective Date”). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the Agreement and shall become a binding and enforceable contract.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. Signatures on this Agreement, or any counterpart of this Agreement, transmitted by facsimile machine or electronic mail in .pdf format shall have the same force and effect as original signatures.

15. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa.

16. Severability. In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect.

17. Warranty of Authority. Each Party or attorney whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this agreement on behalf of the entity on whose behalf his or her signature is affixed and that he or she is acting in the scope of such agency and authority. Each Party specifically represents and warrants that no signatures other than those made on this Agreement are necessary to bind the Parties to all of the obligations imposed by the Agreement.

18. Attorneys' Fees and Costs. Plaintiff and Defendants each agree to pay their own costs, attorneys' fees and expenses incurred in connection with the Action. However, if a lawsuit is commenced to enforce this Agreement, the prevailing party shall be entitled to his/its reasonable attorneys' fees incurred in prosecuting or defending the lawsuit.

19. Captions and Headings. The captions, paragraph numbers and paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this agreement, nor in any way affect this Agreement.

20. Remedies. All Parties shall be entitled to all remedies available at law or in equity for any violation of this Agreement, including, but not limited to the remedy of specific performance.

21. Further Assurances. The Parties shall execute such other documents as may be reasonably necessary to carry out the terms and conditions of this Agreement.

22. Survival. All warranties, representations, covenants, and agreements set forth herein shall survive the Effective Date.

23. Waiver. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by

such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.

24. Entire Agreement. This Agreement contains the complete agreement of the Parties concerning the subjects of this agreement and supersedes all prior drafts of this Agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning that subject of this agreement, whether in connection with the negotiation of this agreement or otherwise. This agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language ultimately agreed to in this Agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this Agreement, the fact that other words may have been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this Agreement. This Agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior

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