

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into and made effective as of the 7 day of June 2011 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, F.S.B. ("FDIC"), EXECUTIVE CAPITAL GROUP ("EXECUTIVE CAPITAL"), STEVEN RUGG ("RUGG"), MICHELLE ISAAK ("ISAAK") and SCOTT LINTON ("LINTON"). The FDIC, EXECUTIVE CAPITAL, RUGG, ISAAK and LINTON may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

1. RECITALS

1.1 On or about October 4, 2010, the FDIC filed a lawsuit entitled *FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B. v. EXECUTIVE CAPITAL GROUP, INC., a California corporation; STEVEN RUGG, an individual, and DOES 1 through 10, Inclusive*; Case No. EDCV10-1513-VAP (DTBx) (hereinafter "Action").

1.2 The Action alleged that on or about November 5, 2007, IndyMac Bank, F.S.B. ("IndyMac") purchased a loan made to [REDACTED] (b)(6) in the principal amount of \$889,000 secured by the real property located at [REDACTED] Alta Loma, California from Integrity Bancorp ([REDACTED] LOAN"). The FDIC alleged that EXECUTIVE CAPITAL acted as the real estate agent, mortgage broker, and escrow for the real estate transaction and allegedly improperly performed its duties. The FDIC filed this Action seeking damages for breach of contract, negligence, negligent misrepresentation and negligent hiring and supervision against EXECUTIVE CAPITAL and its former employee, RUGG.

1.3 On May 9, 2011, the FDIC filed a motion for leave to file a First Amended Complaint to include claims against MICHELLE ISAAK and SCOTT LINTON. The motion was not heard because the Parties reached this settlement and the First Amended Complaint was not filed.

1.4 EXECUTIVE CAPITAL, RUGG, ISAAK and LINTON dispute and deny the FDIC's claims in the Action and relating to the [REDACTED] LOAN and by entering into this Settlement Agreement make no admission of liability for any of the acts or claims asserted against them by the FDIC in the Action. (b)(6)

1.5 The Parties desire and have agreed to settle all claims between the FDIC and EXECUTIVE CAPITAL, RUGG, ISAAK and LINTON relating to the Action and the [REDACTED] LOAN. (b)(6)

1.6 For purposes of this Settlement Agreement, the term "Released Claims" shall mean all claims, causes of action, or allegations of loss which the FDIC did or could have made in the Action or any other lawsuit against EXECUTIVE CAPITAL, RUGG, ISAAK or LINTON or which EXECUTIVE CAPITAL, RUGG, ISAAK or LINTON did

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(b)(6) or could have made in the Action or any other lawsuit against the FDIC arising from or related to the [REDACTED] LOAN.

2. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

2.1 **Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

2.2 **Payment to the FDIC.** Payment of One Hundred Thousand Dollars and no/cents (\$100,000.00) (the "Settlement Funds") shall be paid on behalf of EXECUTIVE CAPITAL, RUGG, ISAAK and LINTON to the FDIC, no later than 2 business days after receipt of the signed Settlement Agreement from the FDIC, by wire transfer to Anderson McPharlin & Connors Trust Account, routing number: [REDACTED] account number: [REDACTED] (b)(4)
(b)(4) [REDACTED] Reference Executive Capital Settlement.

2.3 Within 5 business days of the FDIC's counsel's receipt of the Settlement Funds, the FDIC shall file a stipulation for dismissal of the Action with prejudice in its entirety.

2.4 The Parties specifically acknowledge that this Settlement Agreement is intended to release only the Released Claims.

2.5 The Parties shall bear their own costs and attorneys' fees incurred in the Action.

3. RELEASE

3.1 **Known and Unknown Claims.** The FDIC, EXECUTIVE CAPITAL, RUGG, ISAAK and LINTON acknowledge and agree that the release they give to each other upon executing this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which they may have against each other arising from or in conjunction with the [REDACTED] LOAN. (b)(6)

(b)(6) 3.2 The Parties hereby expressly waive application of *California Civil Code §1542* as it relates to the [REDACTED] LOAN. The Parties certify that they have read and understood the following provisions of *California Civil Code §1542* which states in pertinent part 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

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time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

3.3 The Parties understand and acknowledge that the significance and consequence of its waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising from or in conjunction with the [REDACTED] LOAN or any facts or circumstances related to the [REDACTED] LOAN, that Party will not be able to make any claim against any other Party for those damages. Furthermore, each Party acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release relating to the [REDACTED] LOAN, but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

3.4 Except for the rights, duties, and obligations set forth in this Settlement Agreement, the Parties each hereby fully, finally, and forever release and discharge the other Parties, and any and all of its respective, current and former employees, brokers, investors, members, partners, joint venturers, independent contractors, attorneys, accountants, insurers, agents, investors, representatives, officers, and directors, of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, to any damages, loss, or liability arising from, in conjunction with, or related to the [REDACTED] LOAN or any facts or circumstances related to the [REDACTED] LOAN.

3.5 Notwithstanding any other provision of this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any claims against EXECUTIVE CAPITAL, RUGG, ISAAK and LINTON arising out of other loans, or out of existing or failed financial institutions other than INDYMAC.

3.7 Notwithstanding any other provision, by this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, any action taken by any other federal agency. In addition, this Settlement 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 or the United States Attorney's Office in any federal judicial district. In addition, the FDIC 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.

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4. MISCELLANEOUS

4.1 Conditions of Execution. Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

4.2 No Admission. It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

4.3 Fair Meaning. The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties

4.4 Governing Law. The Parties agree to submit to the Courts of the City and County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

4.5 Attorneys Fees and Costs. Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

4.6 Severability. The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

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

4.8 Review and Understanding. The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understood the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

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4.9 **Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

4.10 **Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile or e-mail shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

4.11 **Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

4.12 **Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

4.13 **Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

4.14 **Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: June 9, 2011
APPROVED AS TO FORM

LURIE, ZEPEDA, SCHMALZ & HOGAN, P.C.

By:



Robert W. Denton

(b)(6)

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Attorneys for Defendants,
EXECUTIVE CAPITAL GROUP, INC. and
STEVEN RUGG

DATED: June 6, 2011

EXECUTIVE CAPITAL GROUP, INC.

By: (b)(6)
Signature

Brian Read, President
Type/Print Name and Title

DATED: June _____, 2011

By: _____
Steven Rugg

DATED: June 6, 2011

By: (b)(6)
Scott LINTON

DATED: June 6, 2011

By: (b)(6)
Michelle Isaak

DATED: June _____, 2011
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By: _____
VANESSA H. WIDENER
Attorneys for Plaintiff FEDERAL DEPOSIT
INSURANCE CORPORATION, as Receiver for
INDYMAC BANK, F.S.B.

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Attorneys for Defendants,
EXECUTIVE CAPITAL GROUP, INC. and
STEVEN RUGG

DATED: June _____, 2011

EXECUTIVE CAPITAL GROUP, INC.

By: _____
Signature

Type/Print Name and Title

DATED: June 7th, 2011

By: _____
Steven Rugg

(b)(6)

DATED: June _____, 2011

By: _____
Scott LINTON

DATED: June _____, 2011

By: _____
Michelle Isaak

DATED: June _____, 2011
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By: _____
VANESSA H. WIDENER
Attorneys for Plaintiff FEDERAL DEPOSIT
INSURANCE CORPORATION, as Receiver for
INDYMAC BANK, F.S.B.

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Attorneys for Defendants,
EXECUTIVE CAPITAL GROUP, INC. and
STEVEN RUGG

DATED: June _____, 2011

EXECUTIVE CAPITAL GROUP, INC.

By: _____
Signature

Type/Print Name and Title

DATED: June _____, 2011

By: _____
Steven Rugg

DATED: June _____, 2011

By: _____
Scott LINTON

DATED: June _____, 2011

By: _____
Michelle Isaak

DATED: June 7, 2011
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

B

VANESSA H. WIDENER
Attorneys for Plaintiff FEDERAL DEPOSIT
INSURANCE CORPORATION, as Receiver for
INDYMAC BANK, F.S.B.

(b)(6)

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DATED: June 3, 2011

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for INDYMAC
BANK, F.S.B.

By: _____



(b)(6)

Signature

Jack Duncan, FDIC Counsel
Type/Print Name and Title