

**AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE**

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE (hereinafter, the "Agreement") is made and entered into by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Bank, F.S.B. ("IndyMac") (FEDERAL DEPOSIT INSURANCE CORPORATION in its capacity as Receiver for IndyMac is referred to herein "FDIC"), and RICHARD W. HACKNEY, individual doing business as HACKNEY APPRAISAL SERVICE ("Hackney"). FDIC and Hackney may be referred to herein individually as "Party" and collectively as the "Parties."

**RECITALS**

This Agreement is made with reference to the following facts:

A. On or about April 23, 2009, FDIC filed a complaint (the "Complaint") for money damages against Hackney and Does 1 through 10, inclusive. The Complaint alleged causes of action against Hackney for negligent misrepresentation and breach of contract / third party beneficiary, in connection with an appraisal by Hackney (the "Hackney Appraisal") of a residential real property located at  (b)(6) Big Bear City, CA 92314 (the "Property"). The Complaint alleged that IndyMac relied on the Hackney Appraisal in deciding to purchase a mortgage loan secured by the Property (the "Loan") and that the Hackney Appraisal had been negligently prepared and contained material misrepresentations. The pending action which the Complaint initiated is entitled Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. v. Richard W. Hackney, etc., et al., and is currently pending in the United States District Court for the Central District of California, Western Division (the "Court"), Case No. CV

09-2831 RGK (RCx) (the "Action").

B. On or about June 4, 2009, Hackney answered the Complaint, generally denying its allegations and asserting numerous affirmative defenses. An Order Re: Striking Or Modifying Portions Of The Answer Of Richard W. Hackney DBA Hackney Appraisal Service was filed on or about September 2, 2009.

C. Hackney has defended and denied, and continues to deny, the validity of FDIC's claims asserted in the Complaint.

D. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation. By this Agreement, the Parties intend to memorialize the terms of their compromise and settlement of the Action.

#### **AGREEMENT AND MUTUAL RELEASE**

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. Settlement Payment to FDIC. No later than thirty (30) days following full execution of this Agreement, Hackney shall deliver to FDIC's counsel of record in the Action a check(s) made payable to "Mortgage Recovery Law Group Client Trust Account, f/b/o Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B." in the total amount of Seventy Thousand Dollars and No Cents (\$70,000.00) (the "Settlement Payment"). Hackney shall cause this check to be delivered as follows:

Kralik & Jacobs LLP

Attn: Lois Moonitz Jacobs

35 North Lake Avenue, Suite 620

Pasadena, California 91101.

FDIC and Hackney agree that timely receipt of the Settlement Payment is an essential term of this Agreement, and a condition to the effectiveness of this Agreement.

2. Dismissal of the Action. Together with the execution of this Agreement, counsel for each Party shall execute a Stipulation of Dismissal of the Action as to Hackney only with prejudice in the form attached hereto as Exhibit A. Within three days after the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by the FDIC, counsel for the FDIC shall file the executed Stipulation of Dismissal with the Court.

3. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this Agreement to the fullest extent permitted by law.

4. Release by FDIC. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, and effective upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by the FDIC, and except as provided in Paragraph 6, below, the FDIC, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present, fully and forever releases, acquits and discharges Hackney and his respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, representatives and assigns, conservators and/or receivers, and all

persons or entities acting by, through, under, for, on behalf of, or in concert with them (the "Hackney Releasees"), past or present, jointly and severally, from and against any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations, damages, costs, fees (including, without limitation, those of attorneys), expenses, actions and/or causes of action of every nature, character and description, or causes of liability, rights and offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, including without limitation injunctive or equitable relief, any award of actual, consequential, incidental, liquidated, or other types or categories of damages, any award of punitive or exemplary damages, any claims for attorneys' fees, costs or expenses of litigation and any other type of relief which the FDIC has, may have or might have against Hackney, the Hackney Releasees or any of them, pertaining to the Loan, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided, however, that this release is not a general release but is expressly and specifically limited to the Loan, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses, damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that the FDIC may have or might have against Hackney or the Hackney Releasees, or any of them, including without limitation any other claims, demands or actions regarding any other matters.

5. Release by Hackney. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, and effective simultaneously with the release granted in Paragraph 4, above, Hackney, on behalf of itself individually

and for each and every one of its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present, fully and forever release, acquit and discharge the FDIC and its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them (the "FDIC Releasees"), past or present, jointly and severally, from and against any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations, damages, costs, fees (including, without limitation, those of attorneys), expenses, actions and/or causes of action of every nature, character and description, or causes of liability, rights and offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, including without limitation injunctive or equitable relief, any award of actual, consequential, incidental, liquidated, or other types or categories of damages, any award of punitive or exemplary damages, any claims for attorneys' fees, costs or expenses of litigation and any other type of relief which Hackney may have or might have against the FDIC, the FDIC Releasees or any of them, pertaining to the Loan, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided, however, that this release is not a general release but is expressly and specifically limited to the Loan, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other

claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that Hackney may have or might have against the FDIC or the FDIC Releases, including without limitation any other claims, demands or actions regarding any other matter.

6. Express Reservations from Releases by FDIC. Notwithstanding any other provision contained herein, by this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed (a) any claims or causes of action that do not arise from or relate to (i) the Loan, (ii) the Property, or (iii) any and all facts, occurrences and transactions alleged in the Action, and (b) any action taken by or any claims that may be asserted by any other federal agency as to any matters, including without limitation any matters that may be based upon or arise out of the acts alleged in the Action. In addition, this Agreement does not purport to waive, nor is it intended 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 State of California, Central District, or any other federal judicial district, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et seq.

7. No Admission of Liability. The FDIC acknowledges that this Agreement does not constitute an admission by Hackney 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 Hackney has denied and continues to deny that Hackney has any liability to the FDIC as alleged in the Action. Likewise, Hackney acknowledges that this Agreement does not constitute an admission by the FDIC that any asserted claim is or

was in any way lacking in merit, and Hackney also acknowledges that this Agreement does not constitute an admission by the FDIC as to the merits of any claim that Hackney has asserted, or could have asserted, in the Action. Nevertheless, the FDIC and Hackney 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 the FDIC and Hackney in the manner and upon the terms and conditions set forth in this Agreement.

8. Waiver under Section 1542 of California Civil Code. Subject to the limitations contained therein and in paragraph 6, above, the releases as set forth in paragraphs 4 and 5 are intended by the Parties to be read and interpreted as broadly as possible to affect the releases set forth therein regardless of whether the claims are presently known or unknown to the Parties. This Agreement is made by the FDIC and Hackney freely and with independent legal advice and counsel, and the FDIC and Hackney are fully aware of the provisions of Section 1542 of the Civil Code of the State of California, which reads 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.”**

However, this is a limited release and not a general release and is only intended to release those claims specifically identified in paragraphs 4 and 5 of the Agreement and is specifically limited by the limitations contained in those paragraphs and in paragraph 6 of this Agreement. Nevertheless, to the extent Civil Code section 1542 (as well as any other

or successor law of similar effect) applies to the Agreement, the FDIC and Hackney waive any rights, benefits and protections they may have under section Civil Code 1542 to the extent necessary to effectuate the Releases set forth herein in Paragraphs 4 through 6, inclusive, herein.

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

- a. The FDIC and Hackney 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. The FDIC and Hackney 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. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made



of this Agreement, the role of the Party in drafting and preparation of the Agreement shall not be referred to in order to construe the Agreement against that Party, and the canon of contractual interpretation shall not be applied.

- 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.

10. Notices.

- a. All notices required or permitted to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery, to the appropriate address indicated below or at such other place or places as any Party may, from time to time, designate in a written notice given to the others. Notices shall be deemed served three (3) days after the date of mailing thereof or upon personal delivery.
- b. The designated notice addresses for Hackney and the FDIC are as follows:

To Hackney:

Gaglione, Dolan & Kaplan  
Jack M. LaPedis, Esq.  
Lindsay McMenamin, Esq.  
20750 Ventura Boulevard, Suite 238  
Woodland Hills, California 91364

To the FDIC:

Kralik & Jacobs LLP  
Lois M. Jacobs, Esq.  
Anastasia E. Bessey, Esq.  
35 North Lake Avenue, Suite 620  
Pasadena, California 91101

11. 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.

12. Agreement Binding on Successors. 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.

13. 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.

14. Governing Law. This Agreement shall be construed in accordance with, and be governed by, the laws of the United States and the State of California.

15. 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 and to bind 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.

16. Attorneys' Fees and Costs. The FDIC and Hackney each agree to pay

their own costs, attorneys' fees and expenses incurred in connection with the Action. In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this Agreement, arising out of a breach of this Agreement, involving claims within the scope of the release contained in this Agreement or pertaining to a declaration of rights under this Agreement, the prevailing Party shall recover its reasonable attorneys' fees incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

17. 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

Dated: 4/9/10, 2010

FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR  
INDYMAC BANK, F.S.B.

By:



(b)(6)

Jock S. Duncan

Its: Counsel

Dated: \_\_\_\_\_, 2010

RICHARD W. HACKNEY, an individual doing  
business as Hackney Appraisal Service

\_\_\_\_\_  
Richard W. Hackney

[Redacted]

(b)(6)

their own costs, attorneys' fees and expenses incurred in connection with the Action. In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this Agreement, arising out of a breach of this Agreement involving claims within the scope of the release contained in this Agreement or pertaining to a declaration of rights under this Agreement, the prevailing Party shall recover its reasonable attorneys' fees incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

17. 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

Dated: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: 12 APRIL, 2010

RICHARD W. HACKNEY, an individual doing business as Hackney Appraisal Service

[Redacted Signature]

Richard W. Hackney

(b)(6)

(b)(6)

[Redacted]

APPROVED AS TO FORM:

Dated: Apr. 13, 2010

KRALIK & JACOBS LLP

(b)(6)

By:

[Redacted Signature]

Lois Moonitz Jacobs  
Attorneys for the Federal Deposit  
Insurance Corporation, as Receiver for  
IndyMac Bank, F.S.B.

Dated: \_\_\_\_\_, 2010

GAGLIONE, DOLAN & KAPLAN

By:

\_\_\_\_\_  
Lindsay McMenamin  
Attorneys for Richard W. Hackney dba  
Hackney Appraisal Service

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2010

KRALIK & JACOBS LLP

By: \_\_\_\_\_  
Lois Moonitz Jacobs  
Attorneys for the Federal Deposit  
Insurance Corporation, as Receiver for  
IndyMac Bank, F.S.B.

Dated: April 12, 2010

GAGLIONE, DOLAN & KAPLAN

(b)(6)

By:   
Lindsay McMenamin  
Attorneys for Richard W. Hackney dba  
Hackney Appraisal Service