

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 San Luis Trust Bank (“FDIC-R”) on the one hand, and Bradley J. Lyon, Casey Appell, Eric J. Wells, James H. Avery, Jon M. Hastings, Daniel L. Helbert, and John A. Ronca, Jr. (collectively the “Settling Former Directors and Officers”) on the other hand (individually, the FDIC-R and the Settling Former Directors and Officers may be referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to February 18, 2011, San Luis Trust Bank, F.S.B. (“Bank”) was a depository institution organized and existing under the laws of the United States;

On February 18, 2011, the Office of Thrift Supervision 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;

The FDIC-R has asserted claims for negligence, gross negligence, and breach of fiduciary duty against the Settling Former Directors and Officers, each of whom served at various times as a director and/or officer of the Bank. The Settling Former Directors and Officers firmly deny liability for the claims;

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 FDIC-R

A. As an essential covenant and condition to this Agreement, within twenty (20) days of the Settling Former Directors' and Officers' receipt from the FDIC-R of: (1) a fully executed copy of this Agreement; (2) the proper payment instructions; and (3) a W-9 form, the Settling Former Directors and Officers will cause their insurer to pay to the FDIC-R the sum of \$3,000,000 ("the Settlement Payment").

B. The Settling Former Directors and Officers shall cause their insurer to deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by the FDIC-R. In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) within the time period described in subsection A of this Section I, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date in which the payment was due to the FDIC-R until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); and/or
2. Enforce this Agreement, in which event the Settling Former Directors and Officers agree to jurisdiction in United States District Court in California, Central District of California, and both the FDIC-R and the Settling Former Directors and Officers agree that the prevailing party in any such action shall be entitled to its reasonable attorney's fees and costs expended in such action; and/or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Former Directors and Officers and Insurer agree to consent, and institute an action on the FDIC-R's claims. The Settling Directors and Officers and Insurer further agree to waive for a period of ninety (90) days after the time period described in subsection A of this Section I, any defense based on any statute of limitations that would bar any of the FDIC-R's claims.

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 Payment or acceptance of a portion of the Settlement Payment 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 after the date determined by subsection A above but prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. The FDIC-R's Releases.

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

1. The Settling Former Directors and Officers and their respective heirs, executors, trustees, administrators, agents, representatives, insurers, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Former Directors' and Officers' respective functions, duties and actions as officers and/or directors of the Bank.

B. The Settling Former Directors and Officers' Release.

Effective simultaneously with the release granted in Section II.A. above, the Settling Former Directors and Officers, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, insurers, attorneys, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, insurers, 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 Former Directors and Officers' respective functions, duties and actions as officers and/or directors of the Bank.

D. 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 Former Directors and Officers 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 Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

SECTION III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Former Directors and Officers are or were shareholders of the Bank 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, Settling Former Directors and Officers 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 IV: 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 or her counsel.

C. Civil Code Section 1542. The Parties specifically intend that the releases contained in this Agreement shall bar all released claims, including those which are currently unknown to them. The Parties understand and accept the risk that they may later discover a claim encompassed by the releases in this Agreement which they did not know or suspect to exist, or to which they could not have known or suspect to exist. The Parties hereby specifically waive the protection of Civil Code section 1542 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."

The foregoing waiver is expressly limited to all claims held by the Plaintiff, FDIC-R as Receiver for San Luis Trust Bank, and shall not apply to any claims of any other receivership or claims of the FDIC in its corporate capacity.

D. Each Settling Defendant has submitted financial information to the FDIC-R and herein affirms that his financial information was true and accurate as of the date of submission. Each Settling Former Director and Officer expressly acknowledges that, in determining to settle the claims against him released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by him. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information.

SECTION V: Reasonable Cooperation

A. 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 VI: 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, 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:

Thomas P. Mazzucco, Murphy, Pearson, Bradley & Feeney; 88 Kearny Street, 10th Floor, San

(b)(6) _____ Francisco, California 94108; 415.788.1900; [REDACTED]

If to the Settling Defendants:

Peter K. Rosen, Latham & Watkins; 355 South Grand Avenue, Los Angeles, California 90071;

(b)(6) _____ 213.891.8778; [REDACTED] (for Bradley Lyon, Eric Wells, Jon Hastings, Daniel Helbert, John Ronca, James Avery)

Michael M. McMahon, Carmel & Naccasha; 1410 Marsh Street, San Luis Obispo, California

(b)(6) _____ 93401; 805.546.8785; [REDACTED] (for Casey Appell)

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. Fees and Costs. Except as otherwise provided above, each Party herein is to bear its own attorneys' fees and costs incurred in connection with this Agreement and the underlying events upon which it is based.

H. 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 SAN LUIS TRUST BANK

Date: _____

BY:

TITLE:

PRINT NAME:

Date: _____

BRADLEY J. LYON

(b)(6) _____
[Redacted Signature]

PRINT NAME:

Date: _____

CASEY APPELL

PRINT NAME:

Date: _____

ERIC J. WELLS

PRINT NAME:

Date: _____

JAMES H. AVERY

(b)(6) _____
[Redacted Signature]

PRINT NAME:

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TITLE:

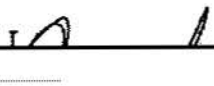
PRINT NAME:


Date: _____

BRADLEY J. LYON

PRINT NAME:

Date: _____

CASEY APPELL 


PRINT NAME: CASEY APPELL

Date: _____

ERIC J. WELLS

PRINT NAME:

Date: _____

JAMES H. AVERY

PRINT NAME:

(b)(6)

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Date: _____

BY:

TITLE:

PRINT NAME:

Date: _____

BRADLEY J. LYON

PRINT NAME:

Date: _____

CASEY APPELL

PRINT NAME:

Date: 2/11/14

ERIC J. WELLS

(b)(6)

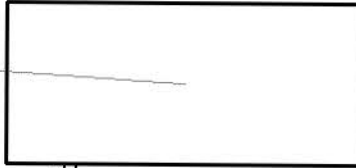
PRINT NAME:

Date: _____

JAMES H. AVERY

PRINT NAME:

(b)(6)



Date: 2-12-14

DANIEL L. HELBERT

Daniel L. Helbert

PRINT NAME:

Date: _____

JON M. HASTINGS

PRINT NAME:

Date: _____

JOHN A. RONCA, JR.

PRINT NAME:

APPROVED AS TO FORM AND CONTENT:

Date: _____

Counsel for FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR SAN LUIS
TRUST BANK

APPROVED AS TO FORM AND CONTENT:

Date: _____

DANIEL L. HELBERT

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(b)(6)

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JOHN A. RONCA JR

(b)(6)

PRINT NAME:

John A. Ronca Jr.

APPROVED AS TO FORM AND CONTENT:

Date: _____

Counsel for FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR SAN LUIS
TRUST BANK

APPROVED AS TO FORM AND CONTENT:

(b)(6)

Date: 2/12/2013



Counsel for Casey Appell

APPROVED AS TO FORM AND CONTENT:

(b)(6)

Date: 2/12/14



Counsel for Bradley Lyon, Eric Wells, Jon Hastings,
Daniel Helbert, John Ronca, James Avery