

## 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 Sonoma Valley Bank, Sonoma, California (“FDIC-R”), Melvin J. Switzer, Sean C. Cutting and Brian Melland (collectively the “Settling Defendants”), Progressive Casualty Insurance Company (“Progressive”), and St. Paul Fire & Marine Insurance Company (“The Excess Insurer”) (collectively the “Insurers”). Individually, the FDIC-R, the Settling Defendants and the Insurers may be referred to herein as “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS:

Prior to August 20, 2010, Sonoma Valley Bank, Sonoma, California (“Bank”) was a depository institution organized and existing under the laws of California;

On August 20, 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 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;

On August 19, 2013, 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 Northern District of California in *Federal Deposit Insurance Corporation as Receiver for Sonoma Valley Bank v. Melvin J. Switzer, Sean C. Cutting and Brian Melland*, Case No. 3:13-cv-

03834-RS ("D&O Action"). The Settling Defendants have denied all allegations of wrongdoing and have denied liability in the D&O Action.

Progressive issued a director and officer liability policy numbered [REDACTED] for the (b)(4) period July 1, 2009 to July 1, 2010 ("Progressive Policy"), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Progressive Policy. The Excess Insurer issued an excess director and officer liability policy numbered [REDACTED] (b)(4) for the period July 1, 2009 to July 1, 2010 ("The Excess Policy"), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Excess Policy. The Settling Defendants asserted claims for coverage under the Progressive Policy and the Excess Policy. Insurers have reserved their rights to deny coverage under the respective policies for claims asserted by FDIC-R against the Settling Defendants. Additionally, Defendant Cutting has asserted a claim for coverage under the Progressive Policy and the Excess Policy in connection with an ongoing criminal prosecution, *United States of America v. Bijan Madjlessi, David Lonich, Sean Cutting, and Brian Melland*, U.S. District Court, N.D. Cal., Case No. 3:14-cr-00139 SI ("Criminal Action").

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further 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, on or before fourteen (14) business days following the date all Parties have executed this Agreement, Progressive, on behalf of the Settling Defendants, agrees to pay the FDIC-R the sum of ONE MILLION FOUR HUNDRED THIRTY THOUSAND FOUR AND 24/100 DOLLARS (\$1,430,004.24) and the Excess Insurer, on behalf of the Settling Defendants, agrees to pay the FDIC-R the sum of THREE MILLION THREE HUNDRED SIXTY-NINE THOUSAND NINE HUNDRED

NINETY FIVE AND 76/100 DOLLARS (\$3,369,995.76), for a total of FOUR MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,800,000.00) (the "First Settlement Payment"). Further, on or before ninety (90) calendar days following the date that the Criminal Action against Cutting is concluded including the exhaustion of Cutting's appeals or Cutting's time for further appeal has run (the "Second Payment Date"), the Excess Insurer, on behalf of the Settling Defendants, agrees to pay the FDIC-R the sum of SIX HUNDRED FIFTY THOUSAND AND 00/00 DOLLARS (\$650,000.00), or such lesser sum that remains on the limit of the Excess Policy, if any, following the Excess Insurer's payment of its portion of the First Settlement Payment and all attorney fees and expenses due and owing as of the Second Payment Date to any of the Settling Defendants for defense of the D&O Action or in connection with the Criminal Action or any other covered claim under the Excess Policy, if any (the "Second Settlement Payment") (referred to collectively with the First Settlement Payment as the "Settlement Payments").

Progressive and the Excess Insurer will be responsible only for payment of their respective portions of the First Settlement Payment as set forth in this Paragraph. Progressive shall have no liability for the \$3,369,995.76 portion of the First Settlement Payment owed by the Excess Insurer. The Excess Insurer shall have no liability for the \$1,430,004.24 portion of the First Settlement Payment owed by Progressive.

The Excess Insurer agrees to provide to the FDIC-R certification as to the amount remaining on the limit of the Excess Policy at the time of the Second Settlement Payment, or certification within 60 days after the exhaustion of the Excess Policy, whichever comes first.

B. The Insurers shall deliver their respective portions of the Settlement Payments to the FDIC-R by direct wire transfer into the following account: Federal Home Loan Bank of New York, New York Main Office, 101 Park Avenue, New York, NY 10178-0599, Routing No.

(b)(4) [REDACTED] Account No. [REDACTED] for credit to FDIC National Liquidation Account OBI Sonoma Valley Bank, Sonoma, California (FIN 10285) Professional Liability ([REDACTED]) DIF Fund. (b)(5)

(b)(5) Asset Number [redacted] Contact – (b)(6) [redacted] DRR Investigations, (972) 761-2659.

C. If the FDIC-R does not receive the Settlement Payments in full on or before the dates 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 Payments in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payments, 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)(2) (which interest amount shall be in addition to, and shall not erode, the limits of either the Progressive Policy or Excess Policy); or

2. Enforce this Agreement, in which event the Settling Defendants and Insurers agree to jurisdiction in United States District Court in the Northern 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 if the FDIC is determined to be the prevailing party; or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants and Insurers agree to consent, and re-institute an action on the FDIC-R's claims, in which event, the FDIC-R will be required to return to Insurers all portions of the Settlement Payments received by the FDIC-R. The Settling Defendants and Insurers further agree to waive any defense based on 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.

The remedies described in this subsection I.C.2. shall not apply to any Insurer that has made its respective payment(s) under this Agreement. 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.

5. Subject to the Excess Policy's limit of liability, the Excess Insurer agrees to pay to counsel for the Settling Defendants (Jones Day, Duane Morris LLP and Geary, Shea, O'Donnell, Grattan & Mitchell, P.C.) all reasonable and necessary Defense Expenses incurred or to be incurred by the Settling Defendants for the defense of the D&O Action, including such Defense Expenses incurred in connection with the mediation and finalization of this Agreement, which are in compliance with the Excess Insurer's litigation management guidelines and which have not been paid by Progressive. The Excess Insurer agrees to pay to counsel for Cutting (Jones Day) all reasonable and necessary Defense Expenses incurred or to be incurred by Cutting for the defense of the Criminal Action which are in compliance with the Excess Insurer's litigation management guidelines and which have not been paid by Progressive. Counsel for Cutting agrees to provide its final invoice for the defense of the Criminal Action within 30 days after the Criminal Action is finally concluded unless the Excess Policy is exhausted by that time. With respect to any unpaid defense invoices pending on the date this Agreement is executed by all of the undersigned Parties, the Excess Insurer agrees to pay those invoices to the respective defense counsel within sixty (60) calendar days after the date this Agreement is executed by all of the undersigned Parties, provided all such invoices have been submitted to the Excess Insurer by that time. Furthermore, with the exception of the releases contained herein, the Excess Insurer and Settling Defendants agree and acknowledge that nothing in this Agreement or the settlement of the D&O Action forecloses or otherwise waives any Settling Defendants' claim or right to coverage under the Excess Policy (including for the Criminal Action if circumstances change after the date that this Agreement is executed), including for amounts that remain on the limit of the Excess Insurer's Policy as of the date this Agreement is executed by all of the undersigned Parties. The Excess Insurer and Settling Defendants further agree and acknowledge that nothing in this Agreement or the settlement of the D&O Action forecloses or otherwise

waives the Excess Insurer's rights and defenses under the Excess Policy or available at law for any new claim that may be submitted by the Settling Defendants under the Excess Policy.

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

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the First Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for the FDIC-R and the Settling Defendants hereto, in the form attached hereto as Exhibit A, in the D&O Action.

## **SECTION III: Releases**

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

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

1. The Settling 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' respective functions, duties and actions as officers and/or directors of the Bank including without limitation the causes of action alleged in, or which could have been alleged in, the D&O Action.

2. Insurers, and their respective parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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, that arise from or relate to the Progressive Policy and the Excess Policy, with the exception of FDIC-R's right to receive, and the Excess Insurer's obligation to make, if any, the Second Settlement Payment in accordance with the terms of this Agreement. As part of this release of the Insurers, the FDIC-R agrees that any interest or rights it may have under the Progressive Policy, but not the Excess Policy, is extinguished.

At such time as the Excess Insurer makes the Second Settlement Payment in accordance

with the terms of this Agreement, or provides the FDIC-R with certification of the exhaustion of the Excess Policy, the FDIC-R agrees that any interest or rights it may have under the Excess Policy is extinguished.

B. The Settling Defendants' Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, successors, and assigns, hereby release and discharge the other Settling Defendants, the FDIC-R, and its employees, officers, directors, 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, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank including without limitation the causes of action alleged, or that could have been alleged in, the D&O Action including without limit actions for indemnity.

C. The Insurers' Release.

Effective simultaneously with the releases granted in Section III.A. above, Insurers, for themselves and their successors and assigns, and on behalf of their respective parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, agents, 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 Progressive Policy or the Excess Policy.

D. The Settling Defendants' Release of Insurers.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and

discharge Progressive and the Excess Insurer, and their respective parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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, that arise from or relate to, the D&O Action and/or the Criminal Action and as to Progressive only, the Progressive Policy, except for Progressive's obligations with respect to the First Settlement Payment as set forth in this Agreement; and as to the Excess Insurer only, the Excess Policy, except for the Excess Insurer's obligations with respect to the First Settlement Payment and Second Settlement Payment or in the event the FDIC-R should terminate this settlement and reinstitute the D&O Action or file a new action as provided in Section I paragraph C.3, if any, as set forth in this Agreement, and the Excess Insurer's payment of all reasonable and necessary attorneys fees and expenses due to the Settling Defendants under the Excess Policy for defense of the D&O Action, in connection with the Criminal Action and/or any other covered claim, as required by Paragraph I.C.5 of this Agreement.

This Release specifically includes, without limitation, except as set forth in the preceding paragraph, the release of 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 any alleged breach of the duty to defend, breach of the duty to settle, breach of contract, breach of a common law duty, breach of the duty of good faith and fair dealing, bad faith, extra-contractual claims, unfair claims settlement practices, claims handling, negligence, gross negligence, intentional acts, violation of any insurance code or other federal or state statute governing insurers, any unfair or deceptive trade practices act or similar federal or state statute, or any other alleged acts, omissions, obligations, requirements, and duties on part of Progressive or the Excess Insurer arising out of the D&O Action or the Criminal Action or any other claim that has been made under the Progressive or the Excess Policy.

Further, the Settling Defendants acknowledge and agree that upon Progressive's payment of its portion of the First Settlement Payment, the entire limit of the Progressive Policy will be



exhausted, and any rights or interests that the Settling Defendants may have under the Progressive Policy will be extinguished.

E. Insurers' Release of the Settling Defendants.

Effective simultaneously with the release granted in Section III.A. above, Progressive and the Excess Insurer, on behalf of themselves and their respective, employees, officers, directors, representatives, attorneys, insurers, reinsurers, successors and assigns, hereby release and discharge the Settling Defendants, individually, and their respective heirs, executors, trustees, administrators, agents, 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 D&O Action and/or the Criminal Action, including, but not limited to, those regarding coverage, defense, indemnity, contribution, reimbursement, recoupment, subrogation, or payment of any attorneys' fees or expenses, judgments, awards, settlements, or any other amounts unless there is a final adjudication of any fraudulent, dishonest or criminal act or a final adjudication of any willful violation of any statute or regulation or law by Mr. Cutting in the Criminal Action, in which case the Excess Insurer is entitled to seek reimbursement from Mr. Cutting for amounts paid on his behalf under the Excess Policy for the Criminal Action.

This Release specifically includes, without limitation, the release of 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 any alleged claims for reimbursement or repayment of any amounts paid or to be paid by Progressive under the Progressive Policy, or by the Excess Insurer under the Excess Policy, breach of contract, breach of a common law duty, breach of the duty of good faith and fair dealing, bad faith, extra-contractual claims, negligence, gross negligence, intentional acts, violation of any insurance code or other federal or state statute governing insureds, any unfair or deceptive trade practices act or similar federal or state statute, or any other alleged acts, omissions, obligations, requirements, and duties on part of the Settling Defendants arising out of the D&O Action or the Criminal Action or any other claim that has

been made under the Progressive Policy or the Excess Policy.

F. 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 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 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 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 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.

Further, to the extent that Settling Defendants may be entitled to any other payments, distributions, or proceeds from the Bank or its holding company by virtue of their positions as officers, directors, and/or employees, including but not limited to deferred compensation from the holding company, Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, title, and interest in and to any and all such payments distributions, or proceeds that the Bank or its holding company might make to the Settling Defendants after calculating their respective shares during the dissolution of the holding company. Settling Defendants make no representation or warranties regarding their entitlement to any such payments, distributions or proceeds, including their right to deferred compensation, from the Bank or its holding company.

#### **SECTION V: California Civil Code Section 1542**

Except as specifically provided for under this Agreement as it relates to the Settling Defendants' right to coverage under the Excess Insurer's Policy and the FDIC-R's rights under Section I above, the Parties acknowledge that they are familiar with California Civil Code Section 1542, which reads that: "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."

Each of the Parties acknowledges that such Party may have sustained damages in connection with the Claims that are presently unknown and unsuspected, and that such damages as the Party may have sustained in connection with the Claims might give rise to additional damages in the future. Nevertheless, each of the Parties acknowledges that this Agreement has been negotiated and agreed upon in light of such possible damages and each Party expressly waives any and all rights under California Civil Code Section 1542 and under any other federal or state statute or law of similar effect in connection with the Claims except as otherwise preserved by this Agreement. Each Party acknowledges and agrees that this waiver is an essential and material term of this Agreement, and that, without such waiver, this Agreement would not have been entered.

#### **SECTION VI. 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. Financial Disclosure Representation. Settling Defendants Cutting and Switzer have submitted financial information to the FDIC-R including Personal Financial Statements dated, respectively, March 2012 for Cutting, and August 15, 2014, for Switzer, and herein each affirms that there has been no material change to his financial information and that the

information that has been provided is true and accurate as of the date of this Agreement. Cutting and Switzer expressly acknowledge that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by them. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that Cutting or Switzer failed to disclose any material interest, legal, equitable, or beneficial, in any asset, Cutting and/or Switzer agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of Switzer's and/or Cutting's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against Cutting and/or Switzer.

D. Consent of the Settling Defendants. Each of the Settling Defendants hereby represents and acknowledges that he: (1) has evaluated the terms of this Agreement, including obtaining the advice of his own selected counsel; (2) approves and consents to the settlement of the D&O Action under the terms set forth in this Agreement; (3) has requested that Progressive and the Excess Insurer fund the settlement of the D&O Action under the terms set forth in this Agreement; and (4) fully understands the effect of this Agreement, including that the payments by Progressive and the Excess Insurer for the Settlement Payments to the FDIC-R for the settlement of the D&O Action will exhaust the limit of the Progressive Policy and will erode and may exhaust the limit of the Excess Policy.

#### **SECTION VII: 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 conclude the D&O Action, and to otherwise perform the terms of this Agreement.

#### **SECTION VIII: 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:

Barbara Slott Pegg, Counsel  
Federal Deposit Insurance Corporation  
3501 N. Fairfax Dr. - B7062  
Arlington, VA 22226  
Telephone: 703/516-5273

(b)(6)



and

Antony S. Burt  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, IL 60606

If to Settling Defendant Switzer:

Stephen H. Sutro  
Duane Morris LLP  
Spear Street Tower  
One Market Plaza, Suite 2200

San Francisco, CA 94105

(b)(6)

If to Settling Defendant Cutting:

Neal J. Stephens  
Jones Day  
1755 Embarcadero Road  
Palo Alto, California 94303

(b)(6)

If to Settling Defendant Melland:

John A. Holdredge  
Geary, Shea, O'Donnell, Grattan & Mitchell P.C.  
90 South E Street, Suite 300  
Santa Rosa, CA 95404

(b)(6)

If to Progressive:

Lewis K. Loss  
Loss, Judge & Ward, LLP  
Hamilton Square  
600 14th St., NW  
Suite 450  
Washington, DC 20005

(b)(6)

If to the Excess Insurer:

R. Stacy Lane  
Bailey Cavalieri LLC  
10 W. Broad Street, Ste. 2100  
Columbus, Ohio 43215-3422

(b)(6)

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. 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.

Dated: 4/11, 2016

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
SONOMA VALLEY BANK

By:  (b)(6)  
Title: Chancellor  
Print name: B. Stott Legg



SETTLING DEFENDANTS:

Dated: April 8, 2016

[Redacted signature box]

(b)(6)

MELVIN J. SWITZER

Dated: \_\_\_\_\_, 2016

SEAN C. CUTTING

Dated: \_\_\_\_\_, 2016

BRIAN MELLAND

Dated: \_\_\_\_\_, 2016

PROGRESSIVE CASUALTY INSURANCE COMPANY

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

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

Dated: \_\_\_\_\_, 2016

ST. PAUL FIRE & MARINE INSURANCE COMPANY

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

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

SETTLING DEFENDANTS:

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
MELVIN J. SWITZER

(b)(6)

Dated: *April 7<sup>th</sup>*, 2016

\_\_\_\_\_  
SEAN C. CUTTING

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
BRIAN MELLAND

Dated: \_\_\_\_\_, 2016

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

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

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

Dated: \_\_\_\_\_, 2016

ST. PAUL FIRE & MARINE INSURANCE  
COMPANY

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

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

SETTLING DEFENDANTS:

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
MELVIN J. SWITZER

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
SEAN C. CUTTING

(b)(6)

Dated: 4/11, 2016

\_\_\_\_\_  
BRIAN MELLAND

Dated: \_\_\_\_\_, 2016

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

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

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

Dated: \_\_\_\_\_, 2016

ST. PAUL FIRE & MARINE INSURANCE  
COMPANY

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

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

SETTLING DEFENDANTS:

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
MELVIN J. SWITZER

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
SEAN C. CUTTING

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
BRIAN MELLAND

Dated: 4/7, 2016

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

By:  (b)(6)

Title: Claims Specialist Sr

Print name: Lawrence D. Leeders

Dated: \_\_\_\_\_, 2016

ST. PAUL FIRE & MARINE INSURANCE  
COMPANY

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

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

SETTLING DEFENDANTS:

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
MELVIN J. SWITZER

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
SEAN C. CUTTING

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
BRIAN MELLAND

Dated: \_\_\_\_\_, 2016

PROGRESSIVE CASUALTY INSURANCE  
COMPANY


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

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

Dated: 4/11, 2016

ST. PAUL FIRE & MARINE INSURANCE  
COMPANY

By:  \_\_\_\_\_ (b)(6)

Title: senior claim counselor, BSI

Print name: Cathy Powell

SCHIFF HARDIN LLP  
Antony S. Burt (Illinois Bar No. 019234)  
233 South Wacker Drive, Suite 6600  
Chicago, IL 60606  
Telephone: (312) 258-5500  
Facsimile: (312) 258-5600

(b)(6) [Redacted]

SCHIFF HARDIN LLP  
Jean-Paul P. Cart (Bar No. 267516)  
One Market, Spear Street Tower  
Thirty-Second Floor  
San Francisco, CA 94105  
Telephone: (415) 901-8700  
Facsimile: (415) 901-8701

(b)(6) [Redacted]

Attorneys for Plaintiff  
FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for  
SONOMA VALLEY BANK

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for  
SONOMA VALLEY BANK,

Plaintiff,

v.

MELVIN J. SWITZER, SEAN C.  
CUTTING, and BRIAN MELLAND,

Defendants.

Case No. 3:13-cv-03834-RS

**STIPULATION OF DISMISSAL WITH  
PREJUDICE**

Plaintiff Federal Deposit Insurance Corporation, as Receiver for Sonoma Valley Bank (“FDIC-R”) and Defendants Melvin J. Switzer, Sean C. Cutting, and Brian Melland (collectively with FDIC-R, the “Parties”), by and through their respective undersigned attorneys, and pursuant

**EXHIBIT A**

to Fed. R. Civ. P. 41(a)(1)(A)(ii) hereby stipulate to the dismissal of this action with prejudice, with the Parties to each bear their own attorney's fees, costs, and expenses incurred in this action.

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Stephen H. Sutro  
DUANE MORRIS LLP  
Suite 2200  
One Market Plaza, Spear Tower  
San Francisco, CA 94105-1127  
[Redacted]  
Attorneys for Melvin J. Switzer

(b)(6)

By: \_\_\_\_\_  
Antony S. Burt  
Jean-Paul P. Cart  
SCHIFF HARDIN LLP  
aburt@schiffhardin.com  
[Redacted]  
Attorneys for the Federal Deposit  
Insurance Corporation

(b)(6)

By: \_\_\_\_\_  
John A. Holdredge  
GEARY, SHEA, O'DONNELL,  
GRATTAN & MITCHELL P.C. 37 Old  
Courthouse Square  
Santa Rosa, CA 95404  
[Redacted]  
Attorneys for Brian Melland

(b)(6)

By: \_\_\_\_\_  
Neal J. Stephens  
JONES DAY  
1755 Embarcadero Road  
Palo Alto, CA 94303  
[Redacted]  
Attorneys for Sean C. Cutting

(b)(6)