

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 Tamalpais Bank ("FDIC-R"), and Allan Bortel, Mark Garwood, Nancy Grauten, Carolyn Horan, Michael Rice, William Tappan, and James Williams (collectively the "Settling Defendants") (individually, the FDIC-R, and the Settling Defendants may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS, prior to April 16, 2010, Tamalpais Bank ("Bank") was a depository institution organized and existing under the laws of California; and

WHEREAS, On April 16, 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; and

WHEREAS, 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; and

WHEREAS, on January 27, 2014, the FDIC-R filed a complaint for money damages against the Settling Defendants, and Richard Smith, now deceased, 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 *FDIC as Receiver for Tamalpais Bank v. Garwood, et al.*, Case No. 3:14-00390 (N. D. Cal.) ("D&O Action"). The Settling Defendants have denied liability in the D&O Action; and

WHEREAS, 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 forty-five (45) calendar days following the date the Parties execute this Agreement and FDIC-R's provision of all necessary payment instructions (whichever comes later), the sum of Nine Million Dollars and 00/100 (\$9,000,000.00) ("the Settlement Payment") shall be paid on behalf of the Settling Defendants as set forth below.

B. The Settlement Payment shall be delivered to FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants. In the event that the Settlement Payment is not delivered to FDIC-R by the date determined by Subsection A above, interest shall accrue on all unpaid amounts at the rate calculated in accordance with 26 U.S.C. § 6621(a)(2) from the date determined by Subsection A above until the date of payment. FDIC-R shall provide all necessary payment instructions no later than five calendar days after full execution of this Agreement.

C. If FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then 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)(2); or

2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in the United States District Court for the Northern District of California; or

3. Terminate the Agreement, move to vacate any dismissal order to which the Settling Defendants agree to consent, return any settlement payments previously made, and re-institute the D&O Action. The Settling Defendants further agree to waive any defense based on any statute of limitations defense that did not exist prior to the execution of this Agreement and would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed 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.

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 prior to receipt of Settlement Payment (including all accrued interest) in full.

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 Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties 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 Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

The Settling Defendants, Richard E. Smith and the Estate of Richard E. Smith, to the extent it exists, and their respective heirs, executors, trustees, administrators, insurers, 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, employees, and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

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, attorneys, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, 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 Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers, employees, and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

C. 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.

SECTION V: 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. Release of Unknown Claims.

California Civil Code §1542 states:

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 Parties are aware of the contents of California Civil Code §1542, and understand and agree that this section and the benefits thereof, if applicable, are hereby expressly waived. It is understood and agreed that the releases of the Settling Defendants and defendant Richard E. Smith and the Estate of Richard E Smith to the extent it exists herein shall apply to all unknown, unanticipated, unsuspected or undisclosed Claims based on the Settling Defendants' actions or failures to act in their respective capacities as directors, officers and/or employees of the Bank, as well as known, anticipated, suspected or disclosed Claims, released in Section III above. Nothing herein shall be construed to create a general release.

SECTION VI: 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 VII: 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:

John C. Letteri
FEDERAL DEPOSIT INSURANCE CORPORATION
3501 Fairfax Drive
Arlington, VA 22226-3500

(b)(6)

[Redacted]

If to the Settling Defendants:

Christine A. Scheuneman, Esq.
Rebecca Tierney, Esq.
Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90071-2228

Christopher C. Cooke, Esq.
Jeffrey W. Kobrick, Esq.
Cooke Kobrick & Wu LLP
177 Bovet Road, Suite 600
San Mateo, CA 94402

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.

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
TAMALPAIS BANK

By: _____
Its: _____

Dated: _____

ALLAN BORTEL

MARK GARWOOD

Dated: _____

Dated: _____

If to the Settling Defendants:

Christine A. Scheuneman, Esq.
Rebecca Tierney, Esq.
Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90071-2228

Christopher C. Cooke, Esq.
Jeffrey W. Kobrick, Esq.
Cooke Kobrick & Wu LLP
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FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
TAMALPAIS BANK

(b)(6) _____
By:
Its: COUNSEL

Dated: April 16, 2015

ALLAN BORTEL

MARK GARWOOD

Dated: _____

Dated: _____

If to the Settling Defendants:

Christine A. Scheuneman, Esq.
Rebecca Tierney, Esq.
Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90071-2228

Christopher C. Cooke, Esq.
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FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
TAMALPAIS BANK

By: _____

Its: _____

Dated: _____

ALLAN BORTEL

MARK GARWOOD

(b)(6)

Dated: 9/16/15 _____

Dated: _____

If to the Settling Defendants:

Christine A. Scheuneman, Esq.
Rebecca Tierney, Esq.
Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90071-2228

Christopher C. Cooke, Esq.
Jeffrey W. Kobrick, Esq.
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FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
TAMALPAIS BANK

By: _____
Its: _____

Dated: _____

ALLAN BORTEI

Dated: _____

MARK GARWOOD

(b)(6)

Dated: _____

NANCY GRAUTEN

Dated: _____

MICHAEL RICE

Dated: _____

JAMES WILLIAMS

Dated: _____

CAROLYN HORAN

Dated: _____

WILLIAM TAPPAN

Dated: _____

NANCY GRAUTEN

CAROLYN HORAN

(b)(6)



Dated: 4/15/15

Dated: _____

MICHAEL RICE

WILLIAM TAPPAN

Dated: _____

Dated: _____

JAMES WILLIAMS

Dated: _____

NANCY GRAUTEN

Dated: _____

MICHAEL RICE

Dated: _____

JAMES WILLIAMS

Dated: _____

CAROLYN HIRAN

[Redacted]

(b)(6)

Dated: 4/30/2015

WILLIAM TAPPAN

Dated: _____

NANCY GRAUTEN

Dated: _____

CAROLYN HORAN

Dated: _____

MICHAEL RICE

(b)(6) _____

Dated: 4/21/15

WILLIAM TAPPAN

Dated: _____

JAMES WILLIAMS

Dated: _____

NANCY GRAUTEN

Dated: _____

MICHAEL RICE

Dated: _____

JAMES WILLIAMS

Dated: _____

CAROLYN HORAN

Dated: _____

WILLIAM TAPPAN

Dated: _____



(b)(6)

NANCY GRAUTEN

Dated: _____

MICHAEL RICE

Dated: _____

JAMES WILLIAMS

(b)(6)

Dated: April 16, 2015

CAROLYN HORAN

Dated: _____

WILLIAM TAPPAN

Dated: _____

EXHIBIT "A"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
TAMALPAIS BANK,

Plaintiff,

v.

MARK GARWOOD; ALLAN BORTEL;
RICHARD SMITH; CAROLYN HORAN;
JAMES WILLIAMS; JEFFREY TAPPAN;
MICHAEL RICE, and NANCY GRAUTEN,

Defendants.

Case No. 3:14-cv-00390-WHO

**JOINT STIPULATION
DISMISSING ACTION WITH
PREJUDICE PURSUANT TO
FED. R. CIV. P. 41(a)(1)**

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Plaintiff Federal Deposit Insurance Corporation as Receiver for Tamalpais Bank ("FDIC-R") and Defendants Mark Garwood, Allan Bortel, Carolyn Horan, James Williams, Michael Rice, and Nancy Grauten ("Defendants") respectfully inform that the matter has settled and the Settlement Agreement has been consummated.

Fed. R. Civ. P. 41(a)(1)(A) provides that an action may be dismissed by the plaintiff without order of the court by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared. Here, all parties to this litigation who have appeared have signed and consented to the dismissal with prejudice of this action.

The FDIC-R has received the Settlement Payment. Therefore, Plaintiff files this notice of voluntary dismissal with prejudice of the above styled case against Defendants and Richard E. Smith. Plaintiff and Defendants have agreed that each party is to bear its own fees and costs.

SO STIPULATED.

DATED: April ___, 2015

BARTKO, ZANKEL, BUNZEL & MILLER
A Professional Law Corporation

By: _____
Charles G. Miller
Attorneys for Plaintiff
FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for Tamalpais Bank
of San Rafael, California

DATED: April ___, 2015

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: _____
Christine A. Scheuneman
Attorneys for Defendants
MARK GARWOOD, ALLAN BORTEL,
CAROLYN HORAN, JAMES WILLIAMS,
JEFFREY TAPPAN and NANCY GRAUTEN

DATED: April ___, 2015

COOKE KOBRICK & WU LLP

By: _____
Christopher Cooke
Attorneys for Defendant
MICHAEL RICE

ORDER

IT IS SO ORDERED:

Dated: _____, 2015

UNITED STATES DISTRICT JUDGE