

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 Washington Mutual Bank (“FDIC-R”) and NJ Lenders Corporation (“NJLC”) (individually, FDIC-R and NJLC may be referred to herein as “Party” and collectively as the “Parties”). This Settlement Agreement shall be effective as of the date last executed by any Party (“Effective Date”).

RECITALS

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank (“WaMu”) was a depository institution organized and existing under the laws of Nevada;

On September 25, 2008, the Office of Thrift Supervision closed WaMu, and, pursuant to 12 U.S.C. § 1821(c), Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), FDIC-R succeeded to all rights, titles, powers and privileges of WaMu, including those with respect to its assets;

Among the assets to which FDIC-R succeeded were all of WaMu’s claims, demands, and causes of action against mortgage brokers;

On February 27, 2023, FDIC-R filed a complaint for money damages against NJLC. Those claims for damages are now pending in the United States District Court for

the Central District of California in FDIC-R v. NJLC, No. 8:23-cv-0349 (“Action”).

NJLC has denied liability in the Action; and

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 February 28, 2025, NJLC shall pay FDIC-R the sum of Eight Hundred Twenty-Five Thousand Dollars (\$825,000) (“the Settlement Payment”), in three installments:

1. Two Hundred Fifty Thousand Dollars (\$250,000) to be paid on or before December 1, 2024 (“First Installment Payment”);
2. Two Hundred Fifty Thousand Dollars (\$250,000) to be paid on or before January 31, 2025 (“Second Installment Payment”); and
3. Three Hundred Twenty-Five Thousand Dollars (\$325,000) to be paid on or before February 28, 2025 (“Third Installment Payment”) (all three collectively, the “Installment Payments”).

The Settlement Payment shall constitute a debt due and owing FDIC-R, an instrumentality, agency and/or other entity of the United States, on the Effective Date. The debt shall be discharged by payment in full to the FDIC-R.

B. NJLC shall deliver the Installment Payments to FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number to be provided by the FDIC-R, contemporaneous with signing this Agreement.

C. If FDIC-R does not receive each Installment Payment in full on or before its respective due date as identified in subsection A above, then NJLC shall be in default of its payment obligations (“Default”). Upon Default, FDIC-R may declare the entire unpaid portion of the Settlement Payment immediately due and payable, and interest shall accrue thereon at the rate of five percent (5%) per annum or the rate calculated in accordance with 26 U.S.C. § 6621(a)(2), whichever rate is higher (“Default Interest Rate”) on the unpaid total (i.e., unpaid amount of Settlement Payment together with all accrued interest) until paid in full or until superseded by the interest rate specified in the Stipulation for Entry of Judgment pursuant to Section I.D below, and FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the payment of any Installment Payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above;

1. Enforce this Agreement, in which case NJLC waives and covenants not to plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever except the defense of payment of the Settlement Payment, in part or in full, to an action or motion to enforce this

Agreement, and agrees to exclusive jurisdiction and venue in the United States District Court for the Central District of California;

2. Enforce the Stipulation for Entry of Judgment, in the form attached as Exhibit B, pursuant to Section I.D below; and/or

3. Seek any other relief available to FDIC-R in law or equity.

Any decision by the FDIC-R to extend the time, and any extension of time, under Section I.C.1 for delivery of any installment or any decision by the FDIC-R to accept a portion of the Settlement Payment, and any 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.1 through I.C.3 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

D. Simultaneously with the full execution of this Agreement by all Parties, the Parties agree to execute the Stipulation for Entry of Judgment for the full amount of the Settlement Payment. If NJLC defaults on any of the Installment Payments, FDIC-R may seek to enforce the Stipulation for Entry of Judgment in the United States District Court for the Central District of California on an *ex parte* basis, subject to the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Central District of California; provided, however, that prior to seeking to enforce the Stipulation for Entry of Judgment, FDIC-R shall provide NJLC with notice of a default of a payment due under the Settlement Agreement and allow NJLC a ten (10) day opportunity to cure the default. Notice of default is required solely to enforce the Stipulation for Entry of

Judgment and shall not otherwise impact any of FDIC-R's rights and/or remedies under this Agreement in any way. If any portions of the Settlement Payment are received prior to default, FDIC-R shall file a Notice of Partial Satisfaction of Judgment concurrently with the Stipulation for Entry of Judgment, to set forth the amount of the Settlement Payment already paid. FDIC-R shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with enforcing the Stipulation for Entry of Judgment.

SECTION II: Stipulation and Dismissal

Within ten (10) business days after the full execution of this Agreement by all of the Parties, FDIC-R shall file a stipulation of dismissal and joint motion for order of dismissal retaining jurisdiction pursuant to Federal Rule of Civil Procedure 41, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A.

SECTION III: Releases

A. FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., FDIC-R, for itself and its successors and assigns, hereby releases and discharges NJLC and its respective parents, subsidiaries, and affiliates, and their respective officers, 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, belonging to FDIC-R, that arise from or relate to the causes of action alleged in the Action.

B. NJLC's Reciprocal Release.

Effective simultaneously with the release granted in Section III.A. above, NJLC, on behalf of itself and its parents, subsidiaries, and affiliates, and their respective successors and assigns, hereby releases and discharges 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 causes of action alleged in the Action.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, FDIC, in any capacity, 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 NJLC 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, WaMu, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to WaMu or any person or entity other than WaMu; and

b. By FDIC in any capacity other than as Receiver for WaMu; and

c. Against any person or entity not expressly released by 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 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 or entity.

3. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed or interpreted as waiving, or intending to waive, any claims that could be brought by the United States or any department, agency or instrumentality thereof (other than the FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.

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.

SECTION V: Reasonable Cooperation

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 Action and to otherwise 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. Counterparts and Digital Signatures. This Agreement may be executed digitally by DocuSign or similar services which use public key cryptography or by hand, in any number of counterparts, and delivered

electronically or physically, each original or electronic copy thereof will be deemed an original, and all of which when taken together constitute one and the same Agreement.

C. Choice of Law/Jurisdiction. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of California. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute. All Parties hereto submit to the personal jurisdiction of the United States District Court for the Central District of California for purposes of implementing and enforcing the settlement embodied in this Agreement.

D. Notices. Any notices required hereunder shall be sent by nationally recognized overnight delivery service (e.g. FedEx or UPS), and by email, to the following:

If to the FDIC-R:

Douglas T. Hoffman
3501 Fairfax Drive, VS-E-7006
Arlington, Virginia 22226
(703) 516-5383
dohoffman@fdic.gov

If to NJLC:

Michael A. Rollin
Katie A. Roush
Foster Graham Milstein & Calisher LLP
360 South Garfield Street, 6th Floor
Denver, CO 80209

mrollin@fostergraham.com
roush@fostergraham.com

E. Entire Agreement and Amendments. This Agreement, including Exhibits, 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 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
WASHINGTON MUTUAL BANK

Date: 11/6/24

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Douglas T. Hoffman
Counsel

Date: 11/6/24

b6

Glenn Durr
President

EXHIBIT A

1 **MARK MIGDAL & HAYDEN**

2 PAUL A. LEVIN (State Bar No. 229077)

3 LAUREN M. GIBBS (State Bar No. 251569)

4 11150 Santa Monica Blvd., Suite 1670

5 Los Angeles, CA 90025

6 TELEPHONE: (305) 374-0400

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7 **FEDERAL DEPOSIT INSURANCE CORPORATION**

8 DOUGLAS T. HOFFMAN (admitted pro hac vice)

9 JONATHAN KOSSAK (admitted pro hac vice)

3501 Fairfax Drive

Arlington, VA 22226

10 TELEPHONE: (703) 516-5383

11 e-mail: dhoffman@fdic.gov; jkossak@fdic.gov

12 Attorneys for Plaintiff, Federal Deposit Insurance Corporation
13 as Receiver for Washington Mutual Bank

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **SOUTHERN DIVISION**

17 FEDERAL DEPOSIT INSURANCE
18 CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

19 Plaintiff,

20 vs.

21 NJ LENDERS CORPORATION,

22 Defendant.

CASE NO. 8:23-cv-00349-JWH-KES

**STIPULATION AND JOINT MOTION TO
DISMISS WITHOUT PREJUDICE
PURSUANT TO FED. R. CIV. P. 41 WITH
RETAINED JURISDICTION**

Hon. John W. Holcomb

1 Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Federal Deposit Insurance
2 Corporation as Receiver for Washington Mutual Bank and Defendant NJ Lenders Corporation
3 agree to and jointly move for entry of an order (1) dismissing this case without prejudice pursuant
4 to this stipulation and the terms of Parties' settlement, (2) incorporating this stipulation into the
5 dismissal order, and (3) retaining the Court's jurisdiction to enforce the terms of the Parties'
6 settlement. The Parties agree that such dismissal without prejudice is conditioned upon this Court's
7 retention of jurisdiction over the settlement.

8 NOW THEREFORE, THE PARTIES STIPULATE TO AND AGREE that this case should
9 be dismissed without prejudice and that this Court should retain jurisdiction to enforce the terms of
10 the Parties' settlement.

11 **WE SO MOVE:**

MARK MIGDAL & HAYDEN

12 Dated: October __, 2024

13 _____
PAUL A. LEVIN

14 Attorneys for Plaintiff Federal Deposit
Insurance Corporation as Receiver for
15 Washington Mutual Bank

16 FOSTER GRAHAM MILSTEIN &
17 CALISHER LLP

18 _____
DANIEL K. CALISHER

19 _____
MICHAEL A. ROLLIN

20 Attorneys for NJ Lenders Corporation
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22
23 Pursuant to Civil L.R. 5-4.3.4(a)(2)(i), I attest that all other signatories listed, an on whose
24 behalf this filing is submitted, concur in the filing's content and have authorized the filing.
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27 Paul A. Levin
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Defendant.

**[PROPOSED] ORDER GRANTING
STIPULATION AND JOINT MOTION TO
DISMISS WITHOUT PREJUDICE
PURSUANT TO FED. R. CIV. P. 41 WITH
RETAINED JURISDICTION**

EXHIBIT B

1 **MARK MIGDAL & HAYDEN**

2 PAUL A. LEVIN (State Bar No. 229077)

3 LAUREN M. GIBBS (State Bar No. 251569)

4 11150 Santa Monica Blvd., Suite 1670

5 Los Angeles, CA 90025

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e-mail: paul@markmigdal.com

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7 **FEDERAL DEPOSIT INSURANCE CORPORATION**

8 DOUGLAS T. HOFFMAN (admitted pro hac vice)

9 JONATHAN KOSSAK (admitted pro hac vice)

3501 Fairfax Drive

Arlington, VA 22226

10 TELEPHONE: (703) 516-5383

11 e-mail: dhoffman@fdic.gov; jkossak@fdic.gov

12 Attorneys for Plaintiff, Federal Deposit Insurance Corporation
13 as Receiver for Washington Mutual Bank

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **SOUTHERN DIVISION**

17 FEDERAL DEPOSIT INSURANCE
18 CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

19 Plaintiff,

20 vs.

21 NJ LENDERS CORPORATION,

22 Defendant.

CASE NO. 8:23-cv-00349-JWH-KES

**STIPULATION FOR ENTRY OF
JUDGMENT**

1 **1. PARTIES**

2 This Stipulation for Entry of Judgment (“Stipulation”) is entered into by and between
3 Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank (“FDIC-
4 R”) and Defendant NJ Lenders Corporation (“NJLC”). The persons and entities entering into this
5 Stipulation are at times referred to individually as a “Party” and collectively as the “Parties.”
6

7 **2. RECITALS**

8 The Parties enter into this Stipulation with reference to and in acknowledgment of the
9 following facts:

- 10 a. On February 27, 2023, FDIC-R filed a complaint in the United States District
11 Court for the Central District of California, in Case No. 8:23-cv-00349 (the
12 “Action”), alleging certain claims against NJLC.
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14 b. After the filing of the Action, the Parties entered into a Settlement
15 Agreement contemplating entry of judgment on the terms stated herein, upon
16 the satisfaction of certain conditions.
17 c. The conditions for entry of judgment set forth in the Settlement Agreement
18 have been satisfied.

19 **3. STIPULATED JUDGMENT**

- 20 a. NJLC stipulates to the entry of judgment in the sum of Eight Hundred
21 Twenty-Five Thousand Dollars (\$825,000) in favor of FDIC-R.
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23 b. Any amounts paid by NJLC to FDIC-R under the Settlement Agreement
24 shall be set forth in a Notice of Partial Satisfaction of Judgment, to be filed
25 concurrently herewith by FDIC-R.
26 c. Interest shall accrue at the legal rate of 10 percent per annum from the date
27 of entry of judgment.
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d. FDIC-R shall be entitled to recover its reasonable attorneys' fees incurred in connection with enforcement of this Stipulation for Entry of Judgment.

4. ENFORCEMENT

The United States District Court for the Central District of California shall retain jurisdiction after entry of the Stipulated Judgment to hear and determine all matters related to this action and to enforce this Stipulation.

5. UNDERSTANDING OF TERMS

The Parties represent that they have read this Stipulation, that its terms have been fully explained to them by their attorneys, and that they understand and agree with its terms.

6. AUTHORITY TO ENTER INTO STIPULATION

Each signatory to this Stipulation represents that he or she is fully authorized by the Party he or she represents to enter into this Stipulation, to execute it on behalf of the Party represented, and to legally bind that Party.

7. EXECUTION IN COUNTERPARTS

This Stipulation may be executed in counterparts, each of which shall be deemed an original. Said counterparts shall constitute one and the same document, and when a copy is signed by an authorized representative of each Party, the Stipulation shall be effective as if a single document were signed by all Parties.

Dated: 11/08/2024

Dated: 11/08/2024

1 MARK MIGDAL & HAYDEN

2 **b6**

3 PAUL A. LEVIN

4
5 Attorneys for Plaintiff Federal Deposit
6 Insurance Corporation as Receiver for
Washington Mutual Bank

FOSTER GRAHAM MILSTEIN &
CALISHER LLP

b6

DANIEL K. CALISHER

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MICHAEL A. ROLLIN

Attorneys for NJ Lenders Corporation

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SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that all signatories listed, and on whose behalf this Joint Stipulation is filed, assent to the contents and authorize the filing of this Joint Stipulation.

DATED: 11/08/2024

MARK MIGDAL & HAYDEN

b6

PAUL A. LEVIN
Attorneys for Plaintiff Federal Deposit
Insurance Corporation as Receiver for
Washington Mutual Bank

1 **MARK MIGDAL & HAYDEN**

2 PAUL A. LEVIN (State Bar No. 229077)

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7 **FEDERAL DEPOSIT INSURANCE CORPORATION**

8 DOUGLAS T. HOFFMAN (admitted pro hac vice)

9 JONATHAN KOSSAK (admitted pro hac vice)

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Arlington, VA 22226

10 TELEPHONE: (703) 516-5383

11 e-mail: dhoffman@fdic.gov; jkossak@fdic.gov

12 Attorneys for Plaintiff, Federal Deposit Insurance Corporation
13 as Receiver for Washington Mutual Bank

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **SOUTHERN DIVISION**

17 FEDERAL DEPOSIT INSURANCE
18 CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

19 Plaintiff,

20 vs.

21 NJ LENDERS CORPORATION,

22 Defendant.

CASE NO. 8:23-cv-00349-JWH-KES

**[PROPOSED] ORDER ENTERING
JUDGMENT**

1 Pursuant to the stipulation of the Parties, ECF No. ___, IT IS ORDERED THAT
2 JUDGMENT BE ENTERED in favor of Plaintiff Federal Deposit Insurance Corporation as
3 Receiver for Washington Mutual Bank in the amount of Eight Hundred Twenty-Five Thousand
4 Dollars (\$825,000), less any amounts identified in any Notice of Partial Satisfaction of Judgment
5 filed concurrently with the stipulation of the Parties.
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7 **IT IS SO ORDERED.**
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10 Date: _____

11 **HON. JOHN W. HOLCOMB**
12 **UNITED STATES DISTRICT JUDGE**
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