

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this 23rd day of September 2013, by, between, and among the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. ("FDIC-R"), on the one hand, and Mason-McDuffie Real Estate, Inc., formerly known as Prudential California Realty, ("Mason-McDuffie"), erroneously sued herein as "Mason McDuffie Real Estate, Inc., doing business as Prudential Better Homes and Gardens Real Estate Mason McDuffie", on the other hand, (individually, the FDIC-R and Mason-McDuffie may be referred to herein as a "Party" and collectively as the "Parties").

### WHEREAS:

Prior to July 11, 2008, IndyMac Bank, F.S.B. ("IndyMac"), was a depository institution organized and existing under the laws of the United States.

On July 11, 2008, the Office of Thrift Supervision closed IndyMac and appointed the Federal Deposit Insurance Corporation as its receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers, and privileges of IndyMac, including those with respect to the claims which are subject to this Agreement.

On July 8, 2011, the FDIC-R filed a complaint for money damages against Mason-McDuffie.<sup>1</sup> 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 IndyMac Bank, F.S.B. v. Judith Jamelle Williams and Mason McDuffie Real Estate, Inc., doing business as Prudential Better Homes and Gardens Real Estate Mason McDuffie*, Case No. 11-cv-03367-WHO (the "Action"). Mason-McDuffie has denied liability for the FDIC-R's claims.

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<sup>1</sup> FDIC-R also sued Judith Jamelle Williams, Mason-McDuffie's agent, but she was never served nor appeared in the action.

(b)(4);(b)(6) IndyMac allegedly purchased two loans to borrower [redacted] totaling (b)(4);(b)(6) \$570,000 (the [redacted] Loans”) in connection with [redacted] purchase of a residential property (b)(4);(b)(6) located at [redacted] (hereinafter the [redacted] Transaction”). Mason-McDuffie, through its agent Judith Jamelle Williams (“Williams”), represented [redacted] and the (b)(4);(b)(6) property sellers in the [redacted] transaction as real estate agent. (b)(4);(b)(6)

(b)(4);(b)(6) IndyMac also allegedly purchased two loans to [redacted] totaling \$517,900 ( [redacted] (b)(4);(b)(6) [redacted] in connection with [redacted] purchase of a residential property located at [redacted] (b)(4);(b)(6) [redacted] (hereinafter the [redacted] Transaction”). Mason-McDuffie, through is agent Williams, represented [redacted] and the property sellers in the [redacted] (b)(4);(b)(6) [redacted] as real estate agent. (b)(4);(b)(6)

(b)(4);(b)(6) A dispute has arisen between the Parties with respect to claims by the FDIC-R related to (b)(4);(b)(6) Mason-McDuffie’s and Williams’ actions as real estate agent for the [redacted] and (b)(4);(b)(6) the [redacted] Transaction (hereinafter any and all present and future claims by the FDIC-R against (b)(4);(b)(6) Mason-McDuffie or Williams in connection with the [redacted] Transaction and the [redacted] (b)(4);(b)(6) Transaction are referred to as the “Claims”). The Parties engaged in settlement negotiations as a result of the Claims. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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, on or before the below-indicated number of days following the date the FDIC-R executes this agreement, Mason-

McDuffie shall pay or cause to be paid to the FDIC-R the total sum of One Hundred Twenty Five Thousand Dollars (\$125,000) (the "Settlement Funds"). The initial payment (the "Initial Payment") shall be for Ninety Five Thousand Dollars (\$95,000) and shall be payable within 30 days of the fully executed Agreement. The Initial Payment shall be made payable to "Mortgage Recovery Law Group Client Trust Account," and mailed to Mortgage Recovery Law Group, LLP, Attn: Andrew P. Bacza, Esq. 700 N. Brand Blvd, Ste. 830, Glendale, California 91203, Reference: IndyMac/Mason-McDuffie Settlement. Then, after a period of not less than twenty-five (25) days, Mason-McDuffie shall make payments of Five Thousand Dollars (\$5,000) on the first of each month for six months. These payments shall be made payable to the "Mortgage Recovery Law Group Client Trust Account" via wire or ACH transfer to "Mortgage Recovery Law Group Trust Account, [REDACTED]; Reference: IndyMac/Mason-McDuffie Settlement."

B. Concurrently with the signing and delivery of this Agreement, Mason-McDuffie shall execute a Stipulation for Entry of Judgment ("Stipulation") to be in the amount of \$125,000 against Mason-McDuffie, less any amount already paid by or on behalf of Mason-McDuffie to FDIC-R under this Agreement, in the form attached hereto as Exhibit I. The Stipulation incorporates by reference the [Proposed] Stipulated Judgment ("Judgment"), attached to the Stipulation as Exhibit A. Both the Stipulation and Judgment are incorporated by reference herein and their terms are made part of this Agreement. The Stipulation and Judgment shall be held in trust by the FDIC-R's attorneys of record and shall not be filed unless Mason-McDuffie breaches paragraph I.A. above and fails to timely cure said breach after receiving written notice of default as provided in paragraph I.C.3. below. The Judgment shall not be entered so long as Mason-

McDuffie performs under the terms of this Agreement with respect to making the payments required by paragraph I.A. above.

C. If Mason-McDuffie does not pay or cause to be paid the Settlement Funds on or before the dates determined by subparagraph A above ("Settlement Payment Due Dates"), then the FDIC-R, in its sole discretion, shall have the right to:

1. extend the period of time for payment, including interest accruing from the Settlement Payment Due Dates through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(b)(3); or
2. enforce this Agreement and, in such event, Mason-McDuffie agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement, not to exceed Fifteen Thousand Dollars (\$15,000); or
3. enforce the Stipulation and Judgment against Mason-McDuffie. In the instance that the FDIC-R pursues the Stipulation and Judgment against Mason-McDuffie for Mason-McDuffie's failure to fully and timely pay in full the Settlement Funds, Mason-McDuffie agrees not to oppose the entry or enforcement of the Stipulation and Judgment and further agrees to compensate the FDIC-R for reasonable costs, fees and other expenses incurred in entering and enforcing the Stipulation and Judgment, not to exceed Fifteen Thousand Dollars (\$15,000). The FDIC-R agrees not to file the Stipulation and Judgment without first providing Mason-McDuffie with notice of non-payment and allowing Mason-McDuffie ten (10) days from the date such notice is sent to cure non-payment. Any obligations by the FDIC-R to provide notice of non-payment will be satisfied by delivering notice of non-payment via electronic mail and overnight



(b)(6)

mail to Mason-McDuffie's counsel of record, who is designated as K. Nina Reynolds, Peterson Martin Reynolds LLP, 49 Stevenson Street, 10th Floor, San Francisco, CA 94105, [REDACTED]; and/or

4. seek any other relief available to it in law or equity.

Any extension of time for delivery of the Settlement Funds shall not prejudice the FDIC-R's right to take other action or seek any relief during or after such period of extension, including the right to bring an action to enforce the Agreement.

**SECTION II: Releases.**

Each Party acknowledges that this Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against another Party arising from the Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part 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.

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those damages.

Furthermore, each Party acknowledges that it consciously intends these consequences even as to

claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Funds, plus any accrued interest, and except as provided in PARAGRAPH II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Judith Jamelle Williams and Mason-McDuffie and its respective employees, agents, officers, directors, representatives, insurers, heirs, executors, administrators, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to the FDIC-R, arising out of or relating to the Claims. Further, upon receipt of the foregoing, FDIC-R agrees to promptly dismiss the Action against Judith Jamele Williams and Mason-McDuffie with prejudice, with each side to bear its own attorneys' fees and costs.

B. Mason-McDuffie's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, Mason-McDuffie, on behalf of itself, and its respective employees, agents, officers, directors, representatives, insurers, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Mason-McDuffie, arising out of or relating to the Claims.

C. Exceptions to Release 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 Mason-McDuffie, 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;

b. against any person or entity not expressly released by the FDIC-R in this Agreement; or

c. which are not expressly released in PARAGRAPH IIA. above.

2. Notwithstanding any other provision of this Agreement, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority to institute administrative enforcement or other proceedings seeking removal, prohibition, civil penalties, restitution or other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person, or which may arise by operation of law, rule, or regulation.

3. Notwithstanding any other provision of this Agreement, this Agreement does not waive any claims brought on behalf of another failed institution or any claims which 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 governmental entity. In addition,

the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

### **SECTION III: Insolvency.**

#### **A. Insolvency.**

Mason-McDuffie warrants as to payments made by or on its behalf that at the time of such payments, it is not insolvent nor will the payment made by or on its behalf render it insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by Mason-McDuffie and not by its counsel.

#### **B. Preferences.**

In the event that the FDIC-R is required to return any portion of the Settlement Funds due to a final order by a court that the transfer of the Settlement Funds or any portion thereof constituted a preference, voidable preference, fraudulent transfer or similar transaction, then, in its sole discretion, the FDIC-R may, without waiver of any other rights it may have in law or equity, pursue any of the rights and remedies set forth in paragraph I.C. above, and/or otherwise permitted by law.

### **SECTION IV: Termination.**

In the event a Party exercises its right to declare this Agreement null and void as provided herein, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the Parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, June 26, 2013.



**SECTION V: Notices.**

Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and may also be sent by email, to the following:

If to the FDIC-R:

Andrew P. Baeza  
Mortgage Recovery Law Group LLP  
700 N. Brand Blvd., Suite 830  
Glendale, CA 91203  
(818) 630-7909

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If to Mason-McDuffie:

K. Nina Reynolds  
Peterson Martin Reynolds LLP  
49 Stevenson Street, 10th Floor  
San Francisco, CA 94105  
(415) 399-2900

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**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 hereto, except to enforce its terms.

B. Execution in Counterparts.

This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon

execution and delivery, shall be deemed a complete original, binding the Party or Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Binding Effect.

All of the undersigned persons represent and warrant that they are a Party 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, administrators, representatives, attorneys, successors and assigns.

D. Entire Agreement.

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. No representations, warranties or inducements have been made to or relied on by any Party concerning this Agreement and its exhibits other than those contained therein.

E. Amendments.

This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing by the Party or Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Reasonable Cooperation.

1. The undersigned 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.

2. Further, Mason-McDuffie agrees to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the Parties to be relevant to enforcement of the Agreement;

b. making themselves available upon request by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the Parties to be relevant to enforcement of the Agreement;

c. appearing to testify, upon request by the FDIC-R, in any matter determined by the Parties to be relevant to enforcement of the Agreement, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC-R, regarding any matter determined by the Parties to be relevant to enforcement of the Agreement.

G. Choice of Law.

This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the internal laws of the State of California, without regard to its conflicts of laws.

H. Advice of Counsel.

Each Party hereby acknowledges that 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 its counsel.

J. Title and Captions.

All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

K. Authorship/Construction.

This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any Party by reason of which Party drafted it.

L. Accuracy of Recitals. The Parties understand, acknowledge, and agree that the Recitals preceding Section I of this Agreement are true, correct, and accurate in all respects and are incorporated into, and are a material part of this Agreement.

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.

DATE: 09/25/13

PETERSON MARTIN REYNOLDS, LLP

APPROVED AS TO FORM

By:

[Redacted Signature]

K. Nina Reynolds  
Attorney for Defendant Mason-McDuffie Real Estate, Inc., fka Prudential California Realty

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DATE: 09/25/13

MASON-MCDUFFIE REAL ESTATE, INC.,  
fka PRUDENTIAL CALIFORNIA REALTY

By:

[Redacted Signature]

Signature

Darren G. Hall, C.F.O.  
Print Name and Title

(b)(6)

DATE:

APPROVED AS TO FORM

GCA LAW PARTNERS LLP

(b)(6)

By:

Susan D. Condon  
Attorney for Plaintiff Federal Deposit  
Insurance Corporation as Receiver for  
IndyMac Bank, F.S.B.

DATE: 10/11/13

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

(b)(6)

By:

*Signature*

Richard S. Gill, Counsel  
*Print Name and Title*