

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank ("FDIC-R") and Ark-La-Tex Financial Services, LLC d/b/a Benchmark Mortgage ("Benchmark") (individually, FDIC-R and Benchmark 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 the United States;

On September 25, 2008, the Office of Thrift Supervision closed the Bank 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 August 10, 2022, FDIC-R filed a complaint for money damages against Benchmark. Those claims for damages are now pending in the United States District Court for the Central District of California in *FDIC-R v. Benchmark*, No. 8:22-cv-1491 ("Action"). Benchmark has denied liability in the Action; and

The 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 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 April 15, 2024, Benchmark shall pay FDIC-R the sum of Six Hundred Fifty Thousand Dollars (\$650,000.00) ("the Settlement Payment") in the following installments:

1. One Hundred Fifty Thousand Dollars (\$150,000.00) to be paid on or before April 15, 2024 ("Initial Payment"); and
2. Five Hundred Thousand Dollars (\$500,000) to be paid in four quarterly installments ("Installments") as follows:
 - a. One Hundred Twenty-Five Thousand Dollars (\$125,000) to be paid on or before August 15, 2024;
 - b. One Hundred Twenty-Five Thousand Dollars (\$125,000) to be paid on or before December 15, 2024;
 - c. One Hundred Twenty-Five Thousand Dollars (\$125,000) to be paid on or before April 15, 2025; and
 - d. One Hundred Twenty-Five Thousand Dollars (\$125,000) to be paid on or before August 15, 2025.

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

B. Benchmark shall deliver the Initial Payment and each Installment to FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number to be provided by FDIC-R, contemporaneous with signing the Agreement.

C. If FDIC-R does not receive the Initial Payment or any Installment in full on or before the date determined by subsection A above, then Benchmark shall be in default of its payment obligations ("Default") and interest shall accrue 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, and FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the Initial Payment or any Installment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above; or
2. Enforce this Agreement, including without limitation, by FDIC-R's motion to summarily enforce the agreed-upon settlement by the Court entering judgment against the Benchmark for breach of the settlement agreement in the amount of the unpaid total (i.e. unpaid amount of Settlement Payment together with all accrued interest) together with the costs of collection and all of FDIC-R's reasonable attorney's fees and costs incurred in enforcing the terms of this Agreement. In such event, Benchmark waive and covenant 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 agree to exclusive jurisdiction and venue in United States District Court in the Central District of California; or
3. Terminate the Agreement by declaring it null and void, move to vacate any dismissal order, to which Benchmark agrees to consent, and re-institute] an action on FDIC-R's claims. Benchmark further agrees to waive and covenant to not plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever that did not exist or was otherwise unavailable as of the Effective Date, except the defense of payment of the Settlement Payment, in part or in full; and/or
4. Seek any other relief available to it in law or equity.

Any decision by FDIC-R to extend the time, and any extension of time, under Section I.C.1 for delivery of the Initial Payment or any Installment or any decision by FDIC-R to accept a portion of the Settlement Payment, and any acceptance of a portion of the Settlement Payment,

shall not prejudice FDIC-R's rights to take any of the actions set forth in Section I.C.1 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full; provided, however, that in the event FDIC-R terminates this Agreement by declaring it null and void, FDIC-R will return to Benchmark any and all amounts paid to FDIC-R under this Settlement Agreement.

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 Initial Payment, plus any accrued interest, 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 Action.

SECTION III: Releases

A. FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., FDIC-R, for itself and its successors and assigns, hereby releases and discharges Benchmark and its 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 the FDIC-R, that arise from or relate to the claims alleged at any time in the Action, including but not limited to those claims asserted in the Complaint filed on August 10, 2022.

B. Benchmark's Reciprocal Release.

Effective simultaneously with the release granted in Section III.A. above, Benchmark, on behalf of itself and its respective 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 claims alleged at any time in the Action, including but not limited to those claims asserted in the Complaint filed on August 10, 2022.

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 Benchmark 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;

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 FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.

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.

SECTION VI: 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 VII: Other Matters

A. No Admission of Liability. The 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 FDIC-R: Stuart Tonkinson
3501 Fairfax Drive
Arlington, Virginia 22226
(214) 673-7549
jtonkinson@fdic.gov

If to Benchmark: Joseph Mirabella
5160 Tennyson Parkway, Suite 1000
Plano, Texas 75024
(972) 398-7623
joe@benchmark.us

E. Entire Agreement and Amendments. This Agreement, including Exhibits, constitutes the entire agreement and understanding between and among the 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 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

Date: 3/14/24

BY:

b6

TITLE: Counsel

PRINT NAME: Stuart Tonkinson

ARK-LA-TEX FINANCIAL SERVICES, LLC d/b/a
BENCHMARK MORTGAGE

Date: 3/14/24

b6

TITLE: General Counsel

PRINT NAME: Joseph Mirabella,

EXHIBIT A

MARK MIGDAL & HAYDEN

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

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

11150 Santa Monica Blvd., Suite 1670

Los Angeles, California 90025

Telephone: (305) 374-0440

e-mail: paul@markmigdal.com

lauren@markmigdal.com

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

**FEDERAL DEPOSIT INSURANCE
CORPORATION**

STUART TONKINSON

3501 Fairfax Drive

Arlington, VA 22226

Telephone: (7214) 673-7549

e-mail: jtonkinson@fdic.gov

Co-Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

ARK-LA-TEX FINANCIAL
SERVICES, LLC

Defendant.

Case No. 8:22-cv-1491-KK-ADS

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

1 Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Federal
2 Deposit Insurance Corporation as Receiver for Washington Mutual Bank
3 and Defendant Ark-La-Tex Financial Services, LLC agree to and jointly
4 move for entry of an order (1) dismissing this case without prejudice
5 pursuant to the Settlement Agreement attached to this stipulation, (2)
6 incorporating this stipulation and the attached Settlement Agreement
7 into the dismissal order, and (3) retaining the Court's jurisdiction to
8 enforce the terms of the Settlement Agreement. This dismissal without
9 prejudice by the parties is conditioned upon the court agreeing to retain
10 jurisdiction over the Settlement Agreement.

11 For the aforementioned reasons, this case is DISMISSED in
12 accordance with the parties' stipulated settlement agreement, with the
13 Court retaining jurisdiction over this case for the purpose of enforcing
14 the terms of the attached Settlement Agreement, which is incorporated
15 into this Order and each party to bear its/their own costs and attorneys'
16 fees. If reopening of the action to enforce settlement becomes necessary,
17 it shall be reopened as though it had never been closed.

18 **It is SO ORDERED.**

19
20 _____
U.S. District Judge

21 WE SO MOVE

22 WE SO MOVE

23 _____
24 Counsel for Plaintiff

25 _____
26 Counsel for Defendant