

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

THIS AGREEMENT is entered into as of March __, 2004, between WASHINGTON MUTUAL BANK, FA, a federally chartered savings association (the "Bank" or "WMBFA," as defined in Paragraph 1.14, below), as successor in interest to BANK UNITED, on the one hand, and LAURA J. SANDOVAL ("Sandoval"), on the other hand, individually and as representative of the Plaintiff Settlement Class, defined below.

RECITALS

A. On March 16, 2001, Sandoval commenced a lawsuit against the Bank, which is now pending in Pierce County (Washington) Superior Court under the caption *Sandoval, et al. v. Washington Mutual Inc, et al.* No. C01-2-06488-1 (the "Action"). In the Action, Sandoval asserts claims for breach of contract, violation of the Washington Consumer Protection Act, and unjust enrichment arising out of the assessment of allegedly improper property inspection fees by Bank United ("BU"), which WMBFA acquired in early 2001. Sandoval brought the Action as a purported class action, but has not yet moved for class certification.

B. The Bank denies the material allegations asserted in the Action and denies any and all liability with respect to the facts and claims alleged in the Action. Nevertheless, without admitting or conceding liability, the Bank desires to settle the claims of Sandoval and the class she sought to represent on the terms and conditions set forth in this Agreement in order to avoid the burden, expense, and uncertainty of continuing litigation, and to put to rest all claims based upon property inspection fees assessed by BU to the Plaintiff Settlement Class, as defined below.

C. Plaintiffs' Class Counsel have analyzed and evaluated the merits of all parties' contentions and the effects of this Agreement upon the members of the Plaintiff Settlement Class, as defined below. Based upon that analysis and evaluation, and recognizing the risks of continued litigation and the likelihood that the Action, if not settled now, will be protracted and expensive, Sandoval and Plaintiffs' Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Action now and on the terms described herein is in the best interests of the Plaintiff Settlement Class.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, Sandoval, the Plaintiff Settlement Class, and the Bank, for themselves and through their undersigned counsel, agree to the following settlement, subject to Court approval, under the following terms and conditions.

I. DEFINITIONS

1.1 "Class Period" means from January 1, 1999, through June 30, 2001.

1.2 "Distribution Date" means the later of thirty (30) days from the date of Final Approval or ten (10) days after the resolution of all objections, if any, pursuant to Paragraphs 4.4 and/or 4.6, *infra*.

1.3 “Eligible Plaintiff” means a member of the Plaintiff Settlement Class who satisfies the requirements set forth in Paragraph 4.3, *infra*.

1.4 “Final Approval” means that all of the following have occurred:

- (a) The Court has entered the Settlement Order and Final Judgment;
- (b) The Court has made its final award of attorneys’ fees and costs; and
- (c) Thirty-one days have passed after entry of the Settlement Order and Final Judgment without any appeals being taken, or, if appeals or requests for review have been taken, the time has passed for seeking further review after orders affirming the Settlement Order and Judgment or denying review after exhaustion of all appellate remedies.

1.5 “Parties” means Sandoval, the Plaintiff Settlement Class, and the Bank.

1.6 “Plaintiff Settlement Class” or “Settlement Class” or “Class” means BU borrowers whose loans were insured by the United States Department of Housing & Urban Development (“HUD”) and who were assessed at least one property inspection fee by BU within the Class Period, but excluding any borrower whose HUD-insured BU loan has been foreclosed.

1.7 “Plaintiffs” means Sandoval and members of the Plaintiff Settlement Class.

1.8 “Plaintiffs’ Counsel” means the law firms of Green & Jigarjian LLP, Cohen, Milstein, Hausfeld & Toll, P.L.L.C., Lieff, Cabraser, Heimann & Bernstein, and the National Consumer Law Center.

1.9 “Potential Claim Amount” means \$1,879,658.45, reflecting the total amount of property inspection fees assessed by BU to members of the Plaintiff Settlement Class during the Class Period.

1.10 “Preliminary Approval” means that the Court has entered an order preliminarily approving the terms and conditions of this Agreement, including the manner of providing notice to the Plaintiff Settlement Class.

1.11 “Settled Claims” means all claims of the Plaintiff Settlement Class arising out of or relating to property inspection fees paid to or assessed by BU during the Class Period.

1.12 “Settlement Order and Final Judgment” means an order and judgment substantially in the form of Exhibit C to this Agreement, entered by the Court and approving this Agreement as binding on the Parties.

1.13 “Settlement Amount” means the sum of all payments, waivers or credits to be made by the Bank under this Agreement, including fees and costs to be paid to plaintiffs’ counsel and any payment to Sandoval, as more particularly set forth in Paragraph 4.5, *infra*.

1.14 “The Bank” or “WMBFA” means Washington Mutual Bank, FA, a federally chartered savings association.

1.15 The plural of any defined term includes the singular and the singular of any defined term includes the plural, as the case may be.

II. GENERAL TERMS OF SETTLEMENT

2.1 In full and final settlement of all claims of Plaintiffs relating to or arising from property inspection fees assessed by BU within the Class Period, the Bank agrees to waive or refund property inspection fees assessed to or paid by each Eligible Plaintiff, in the manner and subject to the conditions set forth more fully below.

2.2 The Bank shall bear the cost of providing notice to the Plaintiff Settlement Class of the pendency of the Action and the proposed settlement of the Settled Claims, in the manner described more fully below. In addition, the Bank shall bear the cost of administering this Agreement and making the calculations, payments, and distributions required under this Agreement. In its sole discretion, the Bank, at its expense, may appoint a third-party administrator to administer and report on the claims process, but will not be obligated to do so.

2.3 Plaintiffs’ Counsel may apply to the Court for an award of attorneys’ fees, costs, and expenses with respect to the Settled Claims in an amount not to exceed \$290,000. The Bank shall not oppose an application in that amount. The Bank will pay fees and costs awarded by the Court in an amount not to exceed \$290,000 directly to Plaintiffs’ counsel. Any amount awarded shall be payable in the manner and subject to the conditions described more fully below.

2.4 Subject to approval of the Court, the Bank shall compensate Laura Sandoval for the time, effort and risk she undertook as representative of the Class by entering into a conditional modification of her current loan with the Bank as follows:

- (a) For the four months beginning with the first day of the month immediately following Preliminary Approval, Sandoval will make monthly payments totaling \$633.07 (the “Payment Amount”), which is the current monthly payment on her loan. Each payment will be made to the order of and deposited in the Trust Account of Green & Jigarjian, LLP. Payments must be made such that the Payment Amount is received by Green & Jigarjian, LLP, no later than the 16th of the month in which it is due. If the Payment Amount is not thus made Sandoval will be obligated to pay a late charge of \$31.65 in addition to the Payment Amount. Once per month, one of Plaintiffs’ Counsel will notify counsel for WMBFA (1) that payments totaling the Payment Amount, plus any applicable late charges, were received and honored, and (2) of the date on which the Payment Amount was received.
- (b) If (but only if) Green & Jigarjian, LLP receives from Sandoval each of the four payments described above, then within 30 days after Final Approval, WMBFA and Sandoval will sign a note modification and a compliance agreement generally in the form of those attached as Exhibit D to this Agreement, which will modify

Sandoval's existing loan to the following terms:

(i) The principal balance of the loan as modified will be the sum of the now-existing principal balance (\$75,742.42), plus the escrow shortage at the time of execution of the modification, plus accrued interest at the time of the modification, less the total of the four payments described in Paragraph 1.1(a), which shall be applied to reduce the principal balance of the loan as modified.

(ii) The interest rate of the loan as modified will be 6.25%. This will be a fixed rate for the life of the loan.

(iii) The loan will be reamortized to be paid in full 30 years from 30 days after Final Approval.

(iv) Sandoval's first payment on the loan as modified will be due on the first day of the month immediately following the expiration of 30 days after Final Approval.

(v) All other terms of Sandoval's original Note and Deed of Trust, as modified in June 2001, will remain in full force and effect.

(c) If Sandoval fails to make any of the four payments within the time prescribed by subparagraph (b) of this paragraph, then her loan will not be modified pursuant to the terms of subparagraph (b). In that event, Sandoval will receive \$2500 in compensation for her service as Class Representative, which WMBFA shall pay no more than 30 days after Final Approval, and WMBFA will be free to exercise any and all legal remedies available to it, including foreclosure proceedings, at any time after the passage of 30 days after Final Approval.

III. SETTLEMENT APPROVAL AND CLASS NOTICE

3.1 Within twenty (20) days of the execution of this Agreement, Sandoval will move for an order in the form of Exhibit A, (a) certifying the Settlement Class, appointing Sandoval as the Settlement Class Representative, and appointing Plaintiffs' Counsel as counsel for the Plaintiff Settlement Class, (b) granting the Court's Preliminary Approval of this Agreement and approving notice substantially in the form of Exhibit B to the Settlement Class, and (c) setting a hearing date to consider objections, if any, to the proposed settlement and enter the Settlement Order and Final Judgment.

3.2 The certification of the Settlement Class shall be binding only with respect to the proceedings related to this Agreement. If the Agreement terminates for any reason, the Settlement Class certification order shall be vacated without further action by the parties or the Court, and the Action shall revert to the status that existed before execution of this Agreement, including as to class certification.

3.3 The Bank shall give notice to the Plaintiff Settlement Class substantially in the form of Exhibit B. The Bank shall determine the final form of Exhibit B as sent to the Class,

including the paper size, paper weight, typeface and margins, subject to the qualification that the mode of presentation shall be neat, legible and reasonably likely to communicate to the Class, and provided that the Bank shall furnish Plaintiffs' Counsel with a sample of the final form of Exhibit B sufficiently in advance of mailing to permit consultation and comment. The notice will be sent to all Class members by first class United States mail at their most recent mailing addresses as they appear in the Bank's available computerized loan records. To the extent a Class member's address does not appear in the Bank's computerized records, the Bank will mail to the last known address as it appears in BU's available computerized loan records. Plaintiff Settlement Class members will be given sixty (60) days from completion of the mailing of class notice to request exclusion from the class or to make claims, as more particularly described below, or to submit objections. The Bank will re-send returned notices if an address correction appears on the returned envelope, but is not required to provide any further mailed notice.

3.4 Within 30 days of the expiration of the 60 day period set forth in Paragraph 3.3, the Parties will request that the Court: (a) grant final approval to the settlement, and (b) enter judgment in accordance with this Agreement, in the form of Exhibit C, approving the Agreement as final, fair, reasonable, adequate, and binding on all members of the Plaintiff Settlement Class who have not excluded themselves, awarding Sandoval the benefits set forth in Paragraph 2.4, *supra*, ordering that the Settlement Amount be distributed as set forth below, dismissing the Settled Claims with prejudice, and barring members of the Plaintiff Settlement Class from bringing claims within the scope of the release. In addition, Plaintiffs' Counsel will request an order approving payment of attorneys' fees and costs to Plaintiffs' Counsel.

3.5 If Final Approval of this Agreement does not occur, for any reason, then this Agreement shall be null and void and shall be deemed terminated unless otherwise agreed to in writing by all Parties hereto and counsel for the Parties.

3.6 The Notice shall direct that exclusion requests, if any, be returned to Green & Jigarjian. Promptly upon expiration of the period for returning exclusion requests, Plaintiffs' Counsel will notify counsel for the Bank of the total number of exclusion requests received and shall make all exclusion requests available to counsel for the Bank for inspection and copying. The Bank, in its sole and absolute discretion, may elect to terminate this Agreement if exclusion requests (as provided for in the Preliminary Approval Order) exceed 1000. The Bank may terminate under this Paragraph by serving a written notice of termination on the Court and Plaintiffs' Counsel, by hand delivery or by first class mail, such that the notice is delivered or postmarked no later than 15 days after the Bank receives notice in writing from Plaintiffs' Counsel of the total number of exclusion requests received. Any such termination shall have the effect described in Paragraph 3.2.

IV. DISTRIBUTION OF PAYMENTS

4.1 The Bank will be responsible for making required distributions, as described below. The Bank will have authority to make all decisions necessary for the orderly implementation and administration of the Settlement Agreement and the distribution of the Settlement Amount consistent with the terms of this Agreement. The Bank shall not have any liability for any settlement administration decision not in conflict with an express term of this

Agreement. The Bank will pay all costs associated with the notice, claims, and distribution process.

4.2 On or before the Distribution Date, attorneys' fees and costs, in an amount approved by the Court (but under no circumstances to exceed \$290,000), shall be distributed to Plaintiffs' Counsel by a check from the Bank made payable to Green & Jigarjian LLP.

4.3 To be entitled to payment or waiver pursuant to this Agreement, a member of the Plaintiff Settlement Class must return a completed claim in the form included as part of Exhibit B, affirming under penalty of perjury that (a) the Class member was in regular contact with BU during any period in which the Class member's BU loan was in default for 30 days or more, (b) the property securing the Class member's HUD-insured loan was occupied during all such periods of default, and (c) the Class member has not lost the property securing the Class member's HUD-insured loan through foreclosure by BU or WMBFA. To be eligible for a distribution, a Class member must return a properly completed claim form to the address set forth on the class notice by the date specified in the class notice, which shall be not later than sixty (60) days from completion of the original mailing of class notice. Subject to the provisions of the following Paragraph, if a Class member's claim form is properly completed, signed, and postmarked within the allotted time, that Class member will be deemed an Eligible Plaintiff.

4.4 The Bank shall have the right to object to any claim on the ground that the claimant is not a member of the Class or that the claim form as submitted contains a misstatement of fact. The Bank shall notify Plaintiffs' Counsel of all such objections (and the grounds and evidence supporting the objections) within fifteen (15) days of entry of the Settlement Order and Final Judgment. Plaintiffs' Counsel and counsel for the Bank shall attempt promptly to resolve the objections through mutual agreement. Any objection still left unresolved fifteen (15) days after notice of the Bank's objections shall be submitted to the Honorable William Cahill for prompt, final and binding resolution, using such informal procedures as Judge Cahill may deem appropriate. If Judge Cahill sustains the Bank's objection to any claim (by determining either that the claimant is not a member of the Class or that the claim form as submitted contains a misstatement of fact), the claimant shall not be deemed an Eligible Plaintiff and shall be entitled to no distribution; if the Bank's objection is overruled, the claimant shall be deemed an Eligible Plaintiff and shall be entitled to a distribution as set forth herein.

4.5 Each Eligible Plaintiff shall be entitled to a waiver or, at the Bank's option, a refund or credit (as the case may be) of all property inspection fees assessed to that Eligible Plaintiff by BU during the Class Period, but not previously waived, credited or refunded, *provided, however*, that if the sum of (a) the claims of Eligible Plaintiffs (including waivers, refunds, and credits to be provided under this Agreement, if any), plus (b) the amount awarded as attorneys' fees and costs (together, the "Settlement Amount"), exceeds 50% of the Potential Claim Amount, then the amount paid to each Eligible Plaintiff shall be reduced pro rata until the Settlement Amount equals 50% of the Potential Claim Amount.

4.6 Within fifteen (15) days after the Date of Final Approval, the Bank shall provide Plaintiffs' Counsel with the names and addresses of Eligible Plaintiffs, in whatever form or media the Bank chooses, setting forth the computations described in the preceding Paragraph (if necessary) and the amount payable or to be credited to or to be waived for the benefit of each

Eligible Plaintiff. If Plaintiffs' Counsel do not object in writing to the Bank's computations within five (5) days, those computations shall be final, conclusive, and binding on the Parties. Should Plaintiffs' Counsel timely object to the computations, the Bank and Plaintiffs' Counsel promptly shall seek to resolve any dispute as to these computations. If they cannot reach agreement within five (5) business days of the Bank's receipt of an objection, the Parties shall submit their disagreement to The Honorable William Cahill, who assisted in mediating this matter, for prompt, final and binding resolution.

4.7 On or before the Distribution Date, the Bank will adjust its records to waive any unpaid property inspection fees assessed by BU to Eligible Plaintiffs during the Class Period and will mail a check to each Eligible Plaintiff in an amount equal to fees assessed by BU during the Class Period and paid by that Eligible Plaintiff, *provided, however*, that if the Eligible Plaintiff still has an active loan with the Bank, the Bank may, in its sole discretion, provide an account credit in lieu of a refund check. Checks will be mailed to the last known address of each Eligible Plaintiff as set forth on the completed claim form required under this Agreement. Checks issued pursuant to this Paragraph shall remain valid for one hundred and twenty (120) days, and any amounts attributable to checks not cashed within one hundred and twenty (120) days of issuance shall remain the property of the Bank.

4.8 The Bank will provide a declaration of mailing to Plaintiffs' Counsel within ten (10) business days of the Distribution Date and simultaneously certify to the Court that the distributions, including waivers and credits (if applicable), have been timely made. Returned checks shall be re-mailed if an address correction appears on the returned envelope. The Bank shall not have any further obligation to re-mail any check returned to it after a mailing in accordance with this Paragraph.

V. RELEASES

5.1 The obligations incurred by the Bank pursuant to this Agreement shall be the full and final disposition and settlement of all claims of Plaintiffs with respect to the Settled Claims.

5.2 Upon Final Approval, Sandoval shall be deemed to have released and forever discharged the Bank (including, for purposes of this release, all of its present and former parents, affiliates, subsidiaries, predecessors-in-interest, successors or assigns, and all of their present and former officers, inside and outside directors, attorneys, accountants, agents, representatives, vendors, insurers, employees, and assigns) from:

- (a) any and all liability with respect to the Settled Claims; and
- (b) any and all other claims, causes of action or liability whatsoever, whether known or unknown, arising from acts or omissions occurring through the date of this Agreement.

5.3 Upon Final Approval, members of the Plaintiff Settlement Class who have not timely excluded themselves shall be deemed to

- (a) be forever barred from instituting, maintaining, or prosecuting any claim concerning the assessment of property inspection fees by BU during the Class Period; and
- (b) have released and discharged the Bank, as well as all of its present and former parents, affiliates, subsidiaries, predecessors-in-interest, successors and/or assigns, and all of their present and former officers, inside and outside directors, attorneys, accountants, agents, representatives, vendors, insurers, employees, and assigns, from any and all liability with respect to all Settled Claims.

VI. MISCELLANEOUS PROVISIONS

6.1 This Agreement was entered into only for purposes of settlement. If for any reason the Agreement is not approved or does not become final, this Agreement and anything said or done pursuant to the Agreement (including certification of a Settlement Class), or as part of the negotiations leading thereto, shall be null and void and shall not be used or admissible in this or any other proceeding for any purpose.

6.2 This Agreement reflects, among other things, the compromise and settlement of disputed claims. Neither this Agreement nor any document referred to herein nor any action taken to carry out this Agreement is, or may be construed as, or may be used as, an admission or concession by or against the Bank on any point of fact or law (including the propriety of class certification of any other class), or of any alleged fault, wrongdoing, or liability whatsoever.

6.3 The Parties' Counsel shall use their best efforts to take all steps contemplated by this Agreement to effectuate the settlement on the stated terms and conditions, to obtain Final Approval of this Agreement, to defend this Agreement on appeal if necessary, and to give the Bank full and final peace from further prosecution of the Settled Claims.

6.4 This Agreement is intended to and shall be governed by the laws of the State of Washington.

6.5 The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, whether oral or in writing, express or implied, and may not be contradicted by evidence of any prior or contemporaneous agreement. Any modification of the Agreement must be in writing and signed by Sandoval and the Bank.

6.6 The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after extensive negotiation, with consideration by and participation of counsel for all Parties. The Agreement shall be construed according to the fair intent of the language taken as a whole, and not for or against either party.

6.7 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

6.8 The waiver by one party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

6.9 This Agreement shall become effective upon its execution by all of the persons for whom signature spaces have been provided below. The Parties may execute this Agreement in counterparts (any one or all of which may be facsimile copies), and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.

6.10 Class Counsel and Plaintiff agree to refrain from disparaging the Bank publicly or in the media with regards to this case, its settlement and/or the Settlement Agreement. Class Counsel and Plaintiff agree to refrain from taking any action with regards to this case, its settlement and/or the Settlement Agreement designed or likely to harm the public perception of the Bank except as may be required for truthful testimony. Any public statement by Class Counsel or Plaintiff concerning the settlement will indicate that it was a compromise resolution of a disputed claim and acknowledge that the Bank denied the material allegations of the complaint.

6.11 The report referred to in Paragraph 4.6 of this Agreement, any claim forms provided under Paragraph 4.3, and any other documentation containing the names and/or addresses of the Bank's borrowers, are to be used by Plaintiffs' Counsel only for purposes of effectuating this Agreement. All such information shall be returned to the Bank's counsel within thirty (30) days of the Distribution Date, provided that the Bank's counsel shall retain that information for reference purposes for a period of not less than one (1) year following the Distribution Date.

6.12 The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

AGREED TO AND ACCEPTED:

GREEN & JIGARJIAN LLP
Attorneys for Plaintiffs

DATED: March ____, 2004

By: _____
Jenelle Welling

COHEN, MILSTEIN, HAUSFELD &
TOLL P.L.L.C.
Attorneys for Plaintiffs

DATED: March ____, 2004

By: _____
Lisa M. Mezzetti

LIEFF, CABRASER, HEIMANN & BERNSTEIN
Attorneys for Plaintiffs

DATED: March ____, 2004

By: _____
Kelly M. Dermody

NATIONAL CONSUMER LAW CENTER
Attorneys for Plaintiffs

DATED: March ____, 2004

By: _____
Stuart Rossman

WASHINGTON MUTUAL BANK, FA

DATED: March ____, 2004

By: _____
Its: _____

DATED: March ____, 2004

Laura J. Sandoval
Individually and as Representative of
the Plaintiff Settlement Class

APPROVED AS TO FORM:

DAVIS WRIGHT TREMAINE LLP
Attorneys for Washington Mutual Bank

DATED: March ____, 2004

By: _____
Stephen M. Rummage