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Attorneys for Plaintiffs

Freedom Mortgage Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JORGE GARCIA, et al., Plaintiffs, v. FREEDOM MORTGAGE CORPORATION, Defendant.	Civil Action No. 09-2668 (JEI) *Fairness Hearing Requested*

JOINT MOTION FOR FAIRNESS HEARING AND APPROVAL OF SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE that, on June 4, 2012, at 9:00 A.M. or as soon thereafter as counsel may be heard, the undersigned, attorneys for the Plaintiffs and Defendant, shall move before the Honorable Joseph E. Irenas, S.U.S.D.J., at the United

States Courthouse in Camden, New Jersey, for approval of a Compromise Settlement Agreement.

PLEASE TAKE FURTHER NOTICE that at the Fairness Hearing, Counsel for the parties shall rely upon the attached Memorandum in Support of Approval of Compromise Settlement Agreement and the Compromise Settlement Agreement, attached to the supporting Memorandum as Exhibit A.

Date: May 11, 2012

Respectfully Submitted

/s/ Diana J. Nobile
Diana J. Nobile
Gregory K. McGillivary
Douglas L. Steele
WOODLEY & McGILLIVARY

/s/ Vincent M. Giblin
Vincent M. Giblin
PITTA & GIBLIN, LLP

Attorneys for Plaintiffs

/s/ William H. Healey
William H. Healey
Phillip G. Ray
KLUGER HEALEY, LLC

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that this Notice of Joint Motion for Fairness Hearing and Approval of Compromise Settlement Agreement and accompanying Documents was served by electronic filing on May 11, 2012 to counsel for Defendant Freedom Mortgage.

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Freedom Mortgage Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JORGE GARCIA, et al.,	:	
	:	HONORABLE JOSEPH E. IRENAS
Plaintiffs,	:	
	:	Civil Action No. 09-2668 (JEI)
v.	:	
	:	
FREEDOM MORTGAGE CORPORATION,	:	
	:	
Defendant.	:	

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR A FAIRNESS HEARING AND FOR APPOVAL OF COMPROMISE SETTLEMENT AGREEMENT

Pursuant to Local Rule 7.1(d)(1), Plaintiffs and Defendant (hereinafter "the parties") jointly present this memorandum in support of the parties' joint motion for a fairness hearing and for approval of a compromise settlement agreement to settle the claims at issue in this matter.

PROCEDURAL BACKGROUND

On January 29, 2009 plaintiffs filed a Complaint against defendant alleging violation of the Fair Labor Standards Act and state wage and hour law in the United States District Court for the Central District of California. (Doc. 1.) On May 29, 2009, the parties stipulated to a change of venue and the case was transferred to the United States District Court for the District of New Jersey. (Doc. 47.) By Order dated September 18, 2009, Plaintiffs' counsel was appointed lead counsel. On November 2, 2009, this case was conditionally certified as a collective action pursuant 29 U.S.C. § 216(b) (Doc. 91.) On February 10, 2011, both parties filed Motions for Partial Summary Judgment, Plaintiff filed a motion to certify the New Jersey wage and hour claims, and the Defendant filed a Motion to Decertify the Collective Action. (Doc. 116, 120, 121, 122.) On June 10, 2011, this Court denied both parties' Motions for Summary Judgment, denied Plaintiffs' motion to certify the New Jersey wage and hour claims, and denied the Defendant's Motion to Decertify the Collective Action. (Doc. 140, 142.). On July 27, 2011, upon joint request of the parties, the case was stayed to permit the parties to engage in mediation, with the Honorable Joel B. Rosen serving as mediator. (Doc. 150.) On November 11, 2011, this stay was extended by joint motion of the parties. (Doc. 153).

LEGAL STANDARD

"[W]hen employees bring a private action for back wages under the FLSA, and present to the district court a proposed settlement, the district court may enter a stipulated judgment after scrutinizing the settlement for fairness." *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982). The *Lynn's Food* Court further described that "[i]f a settlement in an employee FLSA suit does reflect a reasonable compromise over issues, such as FLSA coverage or computation of back wages, that are actually in dispute; we allow the district court to

approve the settlement in order to promote the policy of encouraging settlement of litigation." *Lynn's Food Stores, Inc.*, 679 F.2d at 1354. Here, for the reasons set forth below and in the Compromise Settlement Agreement, the settlement reflects a reasonable compromise regarding the Plaintiffs claims and Freedom Mortgage's alleged defenses.

LEGAL ANALYSIS

Here, the parties have conducted discovery and independent investigations of the facts and law during this litigation, including among other things, depositions of certain plaintiffs, service of interrogatories and requests for production of documents, analysis of the responses thereto, and numerous interviews and depositions of current and former Freedom Mortgage employees. Counsel have further analyzed the applicable law as applied to the facts discovered regarding the allegations of the Plaintiffs, Freedom Mortgage's alleged defenses, and the damages claimed by the Plaintiffs.

Plaintiffs and Plaintiffs' counsel believe that the claims asserted in this case have merit. However, Plaintiffs' counsel recognizes and acknowledge the expense and length of continued proceedings necessary to prosecute the litigation against the Company through trial and possible appeals. Plaintiffs' counsel has also taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in such litigation and the likelihood of protracted appellate review. As a consequence of their investigation and analyses, Plaintiffs' counsel has engaged in intensive arm's length negotiations with counsel for the Defendant with a view to achieving settlement. Plaintiffs and Plaintiffs' counsel believe that the settlement reached confers substantial benefits upon the Plaintiffs and that the settlement is fair, reasonable, adequate, in accordance with the law, and in the best interests of the Plaintiffs.

Defendant and its counsel believe that the claims asserted in the instant actions are without merit. Thus, Defendant has denied and continues to deny Plaintiffs' claims, and has denied and continues to deny all charges of wrongdoing or liability against it. Although the Defendant has contested the allegations in the litigation to date and denies that it committed any wrongful action or violation of law, it believes nonetheless that further litigation with respect to the Plaintiffs would be protracted, expensive, and contrary to its best interests. Substantial amounts of time, energy, and other resources have been and, absent settlement, will continue to be devoted to Freedom Mortgage's defense against the claims asserted by Plaintiffs. In light of these realities, Defendant believes that settlement is the best way to resolve the disputes among the parties while minimizing its own further expenditures.

Accordingly, the parties negotiated at arms length a Compromise Settlement Agreement that represents a fair and reasonable compromise to settle the Plaintiffs' FLSA and state wage and hour claims. The Compromise Settlement Agreement is the result of extensive, arm's length negotiations by counsel well-versed in the prosecution and defense of wage and hour collective actions. Additionally, the assistance of an experienced mediator, The Honorable Joel B. Rosen, U.S.M.J. (ret.), reinforces that the Compromise Settlement Agreement is non-collusive, fair, and reasonable.

The parties agree that the settlement will not be deemed to be a concession or admission by Defendant of any violation of federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity and will not be used in any proceeding other than the proceedings under or to interpret or enforce this Agreement. Plaintiffs' counsel has made an independent arms length determination that settlement and

dismissal of the claims of the Plaintiffs who are parties to this Agreement is appropriate under the circumstances of this case.

Pursuant to the terms of the Comprise Settlement Agreement, eligible Plaintiffs who were employed by Defendant during the recovery period (i.e., during the three years prior to the date a plaintiff's consent form was filed with the court and ongoing until the end of a plaintiff's employment with the Defendant, or, for Plaintiffs still employed by Defendant, until the date the settlement becomes final) will receive back wages and liquidated damages computed based on the number of weeks the Plaintiffs worked during the recovery period and the job classification of the Plaintiff while employed by Defendant. Additionally, Defendant has agreed to pay an amount towards the Plaintiffs' attorneys' fees and expenses. In consideration, the Plaintiffs agree to dismiss the pending litigation against the Defendant, with prejudice, and release Defendant from any claims the Plaintiffs may have against the Defendants' for violation of the FLSA and similar wage and hour claims under state law arising from their employment with the Defendant.

CONCLUSION

The parties respectfully request a final hearing concerning approval of the Settlement Agreement ("Fairness Hearing") be held before this Court on June 4, 2012. At the Fairness Hearing, the parties will request that the Court, among other things: 1) enter Judgment in accordance with the Compromise Settlement Agreement; 2) approve the Agreement as final, fair, reasonable, adequate and binding on all Plaintiffs; and 3) dismiss the litigation with prejudice as to the Defendant.[1]

[1] A Proposed Agreed Order of Dismissal is attached hereto as Exhibit B.

Date: May 11, 2012

Respectfully Submitted

/s/ Diana J. Nobile
Diana J. Nobile
Gregory K. McGillivary
Douglas L. Steele
WOODLEY & McGILLIVARY

/s/ Vincent M. Giblin
Vincent M. Giblin
PITTA & GIBLIN, LLP

Attorneys for Plaintiffs

/s/ William H. Healey
William H. Healey
Phillip G. Ray
KLUGER HEALEY, LLC

Attorneys for Defendant

EXHIBIT A

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Attorneys for Defendant
Freedom Mortgage Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JORGE GARCIA, et al., Plaintiffs, v. FREEDOM MORTGAGE CORPORATION, Defendant.	:	HONORABLE JOSEPH E. IRENAS Civil Action No. 09-2668 (JEI)

COMPROMISE SETTLEMENT AGREEMENT

This Compromise Settlement Agreement ("Agreement") is made and entered into by and among the current and former employees of Defendant Freedom Mortgage Corporation, identified on Exhibit A, which is attached hereto, who are all persons who have timely consented to be party Plaintiffs in this case ("Plaintiffs"), and Defendant Freedom Mortgage Corporation ("Defendant" or "Company").

I. RECITALS

1.1 Plaintiffs are individuals employed or formerly employed by the Company who work or worked in three positions: Call Center Loan Officers, Branch Loan Officers, and/or Loan Processors. For the purpose of this Agreement, unless otherwise specified, the term "Plaintiffs" refers to all employees employed in the three positions and identified on Exhibit A.

1.2 Plaintiffs have made certain allegations and accusations concerning their employment with the Company regarding an asserted failure to pay overtime compensation properly and other alleged deficiencies under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, New Jersey Wage and Hour Law, N.J. Stat. Ann. § 34:11-56a *et seq.*, California Labor Code, §§218 and 1194, California Business & Professions Code §17200 *et seq.*, all of which the Company has from the outset denied and currently denies.

1.3 The parties and their counsel have considered that the interests of all concerned are best served by compromise, settlement and dismissal of the instant action with respect to those Plaintiffs who are parties to this Agreement, with prejudice, and have concluded that the terms of this Agreement are fair, reasonable, adequate, and in the parties' mutual best interests.

1.4 The parties participated in a private mediation and, as a result of such mediation, have agreed to settle the issues, matters and things in dispute between and among them pursuant to the terms of this Agreement.

II. COMPROMISE ACKNOWLEDGEMENT

2.1 Plaintiffs acknowledge and agree that this Agreement and the consideration provided herein have been and are made and received solely on the basis of a compromise of the disputed claims, and this Agreement is not, and is not to be construed as, an admission by the Company of any liability whatsoever, nor is it, nor

shall it be construed as, an admission of any act or fact whatsoever, including any violation of federal, state, local or common law, statute, ordinance, directive, regulation or order (including executive orders).

2.2 The parties have conducted discovery and independent investigations of the facts and law during this litigation, including, among other things, depositions of certain Plaintiffs, service of interrogatories and analysis of the responses thereto, and numerous interviews of current and former Company employees. Counsel have further analyzed the applicable law as applied to the facts discovered regarding the allegations of Plaintiffs, the Company's defenses thereto, and the damages claimed by Plaintiffs.

2.3 The Plaintiffs and Plaintiffs' counsel believe that the claims asserted in the instant actions have merit. However, Plaintiffs' counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the litigation against the Company through trial and possible appeals. Plaintiffs' counsel have also taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in such litigation and the likelihood of protracted appellate review. As a consequence of their investigation and analyses, Plaintiffs' counsel have engaged in intensive arm's length negotiations with counsel for the Company with a view to achieving settlement. The Plaintiffs and Plaintiffs' counsel believe that the settlement reached confers substantial benefits upon the Plaintiffs and that the settlement is fair, reasonable, adequate, in accordance with the law, and in the best interests of the Plaintiffs.

2.4 The Company and its counsel believe that the claims asserted in the instant actions are without merit. Thus, the Company has denied and continues to deny Plaintiffs' claims, and has denied and continues to deny all charges of wrongdoing or liability against it. Although the Company has contested the allegations in the litigation to date and denies that it committed any wrongful action or violation of law, it believes nonetheless that further litigation with respect to the Plaintiffs would be protracted,

expensive, and contrary to its best interests. Substantial amounts of time, energy, and other resources have been and, absent settlement, will continue to be devoted to the Company's defense against the claims asserted by Plaintiffs. In light of these realities, the Company believes that settlement is the best way to resolve the disputes among the parties while minimizing its own further expenditures.

2.5 The settlement will not be deemed to be a concession or admission by Defendant of any violation of federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity and will not be used in any proceeding other than the proceedings under or to interpret or enforce this Agreement.

2.6 Plaintiffs' counsel have made an independent arms length determination that settlement and dismissal of the claims of the Plaintiffs who are parties to this Agreement is appropriate under the circumstances of this case.

2.7 The parties, through their counsel, hereby seek judicial approval of their compromise and the resolution of the dispute between Defendant and Plaintiffs. In the event the proposed settlement contained in this Agreement does not become effective in accordance with the terms hereof, is not finally approved, is terminated, cancelled or fails to become effective for any reason, this Agreement will no longer have any effect and the parties will revert to their respective positions as of the date and time immediately prior to the execution of this Agreement.

III. DEFINITIONS

3.1 As used in this Agreement, the following terms shall have the meaning set forth below, unless otherwise defined herein. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

(a) Claims Administrator. "Claims Administrator" shall mean Epiq Systems, which is an entity selected by Plaintiffs' Counsel to administer payment of claims pursuant to this Agreement.

(b) Plaintiffs' Counsel. "Plaintiffs' Counsel" shall mean Woodley & McGillivary and Pitta & Giblin, LLP. For purposes of providing any notices required under this Agreement, "Plaintiffs' Counsel" shall refer to Douglas L. Steele, Esq., Woodley & McGillivary, 1101 Vermont Ave., N.W., Suite 1000, Washington, D.C. 2005 and Vincent M. Giblin, Esq., Pitta & Giblin, LLP, 120 Broadway, 28th Floor, New York, New York 10271.

(c) Court. "Court" shall mean the United States District Court for the District of New Jersey, The Honorable Judge Joseph E. Irenas, or his duly appointed or designated successor.

(d) Defendant's Counsel. "Defendant's Counsel" shall mean Kluger Healey, LLC. For purposes of providing any notices required under this Agreement, "Defendants' Counsel" shall refer to William H. Healey, Esq., Kluger Healey, LLC, 219 Broad Street, Red Bank, New Jersey 07701.

(e) DOL Audit. "DOL Audit" shall refer to the wage and hour audit conducted on the Defendant by the New Jersey Department of Labor and Workforce Development covering the time period February 5, 2007 through February 6, 2009.

(f) Effective Date. "Effective Date" shall be that date that all of the following have occurred:

(i) The Court has entered Judgment and has approved the Agreement;

(ii) The Judgment and ruling on such motions have become Final. "Final" means the later of:

(1) Thirty-one (31) days after the Court has entered Judgment;

(2) If rehearing, reconsideration, or appellate review of this Agreement is sought by any individual with standing, the day after any and all

avenues of rehearing, reconsideration, and appeal have been exhausted, no further rehearing, reconsideration, or appeal is permitted, the time for seeking such review has expired, and the judgment and rulings have not been modified, amended, or reversed in any way; or

(3) June 15, 2012, whichever applies.

(g) Eligibility Period. "Eligibility Period" shall mean January 29, 2006 through the date of this agreement.

(h) Fairness Hearing. "Fairness Hearing" shall mean the hearing at which the Court will consider and finally decide whether to enter Judgment. The date of the Fairness Hearing shall be set by the Court.

(i) Judgment. "Judgment" shall mean the Court order that: (1) approves this Agreement, and (2) dismisses the Litigation with prejudice and retains jurisdiction for purposes of enforcing the Agreement, and (3) makes such other final rulings as are contemplated by this Agreement.

(j) Litigation. "Litigation" shall mean *Garcia, et al. v. Freedom Mortgage Corporation*, Civil Action No. 09-2668(JEI), pending in the United States District Court for the District of New Jersey.

(k) Settlement Amount and Payment

(i) Gross Settlement Amount. "Gross Settlement Amount" shall mean the One Million Six Hundred Thousand Dollars ($1,600,000) that the Defendant has agreed to pay to settle the Litigation.

(ii) Net Settlement Amount. "Net Settlement Amount" shall mean the Gross Settlement Amount (*i.e.*, $1,600,000) minus the Attorneys' Fees and Costs of Six Hundred Thousand Dollars ($600,000) for a total of One Million Dollars ($1,000,000). The Net Settlement Amount will be divided into two parts: (1) $500,000 will be used to pay back wages and (2) $500,000 will be used to pay liquidated damages and Incentive Payments.

(iii) Plaintiffs. "Plaintiffs" shall mean any individual who has filed a consent to join the Litigation. Plaintiffs shall be divided into three groups:

(1) Call Center Loan Officer. "Call Center Loan Officer" shall mean any Plaintiff employed by the Company as a loan officer in its offices located in Mount Laurel, New Jersey or Irvine, California.

(2) Branch Loan Officer. "Branch Loan Officer" shall mean any Plaintiff employed by the Company as a loan officer in a location/office other than the offices located in Mount Laurel, New Jersey or Irvine, California.

(3) Loan Processor. "Loan Processor" shall mean any Plaintiff employed by the Company as a loan processor.

(iv) Incentive Payments. "Incentive Payments" shall mean the payments made to certain Plaintiffs in recognition of their prosecution of, and participation in, the Litigation.

IV. APPROVAL

4.1 Promptly after execution of this Agreement:

(a) Plaintiffs shall retain the Claims Administrator to administer the claims process. The Claims Administrator shall be responsible for the claims administration process and distributions to Plaintiffs and Plaintiffs' Counsel as provided herein. Plaintiffs' Counsel shall pay any and all fees associated with the retention of the Claims Administrator. The Claims Administrator shall provide a detailed invoice(s) of its services to Plaintiffs' Counsel and Defendant for any services under this Agreement.

(b) Parties shall jointly move to approve the Agreement, which by its terms shall:

(i) Approve the terms of the Agreement;

(ii) Schedule a Fairness Hearing to: (i) consider the fairness, reasonableness and adequacy of this Agreement; (ii) determine whether the parties have a

bona fide dispute; and (iii) consider whether the Court should enter Judgment approving the Agreement and dismissing the Litigation with prejudice.

(iii) Plaintiffs shall file consents to join the Litigation for Charles Cobb, Lamont Purnell, and Earl Black.

V. FAIRNESS HEARING

5.1 Fairness Hearing.

(a) At the Fairness Hearing, the parties will request that the Court, among other things, (i) enter Judgment in accordance with this Agreement, (ii) approve the Agreement as final, fair, reasonable, adequate and binding on all Plaintiffs, and (iii) dismiss the Litigation with prejudice as to the Defendant.

(b) In the event the Court fails to enter Judgment in accordance with this Agreement, or such Judgment does not become Final as defined herein, the parties shall proceed as follows: The Litigation will resume unless the parties jointly agree to: (1) seek reconsideration or appellate review of the decision denying entry of Judgment, or (2) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement. In the event any reconsideration and/or appellate review is denied, or a mutually agreed-upon settlement is not approved, the Litigation will proceed as if no settlement had been attempted.

VI. PAYMENT AND DISTRIBUTION

6.1 Financial Obligation of Defendant: In consideration for the terms, conditions and undertakings by or relating to Plaintiffs in this Agreement and the mutual promises and covenants contained herein, the Company will pay Plaintiffs and Plaintiffs' Counsel, through the Claims Administrator in the Litigation, the Gross Settlement Amount. This is an amount agreed to among the parties to compromise, settle and satisfy the disputed claims of Plaintiffs and their claims for back wages, liquidated damages, Incentive Payments, interest, costs, and attorneys' fees necessary to the pursuit and administration of the Litigation and its settlement, lost opportunity or similar damage or

expense claims, all of which the Defendant disputes. Other than the employer-share of payroll taxes described in Paragraph 6.2(f)(iv), the Defendant will not be required to pay more than the Gross Settlement Amount.

6.2 Settlement Payments to Plaintiffs.

(a) Settlement Share. Each Plaintiff is eligible to receive a share of the Net Settlement Amount, pursuant to the following formula, based primarily on the length of his/her employment, job classification and receipt of payment as a result of the DOL Audit:

(i) For each week that a Plaintiff worked as a Call Center Loan Officer during the Eligibility Period, he or she will be credited with one (1) point.

(ii) For each week that a Plaintiff worked as a Branch Loan Officer during the Eligibility Period, he or she will be credited with one-half (1/2) point.

(iii) Except for Loan Processors receiving monies as a result of the DOL Audit, for each week that a Plaintiff worked as a Loan Processor during the Eligibility Period, he or she will be credited with one (1) point. Loan Processors who received monies as a result of the DOL Audit will receive an offset from their percentage share. For each week that a Loan Processor (who received monies as a result of the DOL Audit) worked during the time period covered by the DOL Audit, they will be deemed to have received back wages for those weeks and will only be credited with one-half (1/2) point during those weeks.

(iv) The total amount of points for each individual will then be divided into the total amount of points for all eligible Plaintiffs to determine the percentage share of the Net Settlement Award that the individual will receive.

(b) Residual Funds. Two years after the Effective Date, the amount of any unclaimed settlement monies will be distributed in the order of preference as follows: (1) any amounts remaining shall be first used to offset administrative costs paid to the Claims Administrator, as approved by Plaintiffs' Counsel and

Defendant, for administration of the settlement; (2) any remaining amounts thereafter shall be used to reimburse Defendant for the amounts it paid in FICA contributions up to the actual amount it paid in FICA contributions relating to the payments to Plaintiffs; and (3) any amounts remaining thereafter shall be distributed pro-rata according to the original distribution formula, to the Plaintiffs who have cashed their settlement checks.

(c) Attorney's Fees and Costs.

(i) The payment of the Attorneys' Fees and Costs shall be paid out of the Gross Settlement Amount and shall be reported on IRS Form 1099 issued to the Woodley & McGillivary firm. The Woodley & McGillivary firm shall be responsible for issuing payment and an IRS Form 1099 to the Pitta & Giblin firm for its award under this Agreement.

(d) Payment Date.

(i) The parties agree that the Gross Settlement Amount will be paid by the Defendant in four installments as follows:

(1) On or before the Effective Date, the Defendant shall pay the gross amount of $500,000.00 by single check or wire transfer to the trust account of the Claims Administrator.

(2) On or before 90 days after the Effective Date, the Defendant shall pay the gross amount of $366,666.67 by single check or wire transfer to the trust account of Claims Administrator.

(3) On or before 180 days after the Effective Date, the Defendant shall pay the gross amount of $366,666.67 by single check or wire transfer to the trust account of Claims Administrator.

(4) On or before 270 days after the Effective Date, the Defendant shall pay the gross amount of $366,666.66 by single check or wire transfer to the trust account of Claims Administrator.

(ii) The entire first installment payment, as described in Paragraph 6.2(d)(i)(1), shall be used to compensate Plaintiffs for backpay as a part of the Net Settlement Amount. The remaining installment payments, as described in Paragraphs 6.2(d)(i)(2-4), shall be divided by allotting $200,000.00 towards Attorney's Fees and Costs with remaining monies of each installment representing liquidated damages and Incentive Payments.

(e) If payments to Plaintiffs described in Paragraph 6.2(a) are not cashed within one hundred twenty (120) days of their mailing, the checks will be null and void and the money will be distributed in accordance with Paragraph 6.2(b).

(f) Tax Treatment.

(i) For tax purposes, 50% of the Net Settlement Amount shall be treated as back wages and the remaining 50% of the Net Settlement Amount shall be treated as liquidated damages and Incentive Payments.

(ii) Payments treated as backpay pursuant to Paragraph 6.2(a)(ii) shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the IRS and the payee under the payee's name and social security number on an IRS Form W-2. Payments treated as liquidated damages and Incentive Payments shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and social security number on an IRS Form 1099.

(iii) The Claims Administrator will be responsible for preparing and distributing IRS Form W-2s and Miscellaneous Income Form 1099s to the Plaintiffs reflecting the amount of settlement monies distributed to each Plaintiff.

(iv) Defendant will be responsible for paying all applicable employer-share tax contributions, including but not limited to FICA, SUI, SUTA and

FUTA, for each Plaintiff based on the actual distributions to such persons. Claims Administrator shall be responsible for calculating the amount of employer-share taxes and will advise the Defendant of the method and result of its calculation not later than 10 days after the Fairness Hearing, in order for Defendant to review the accuracy of said calculation. On or before the Effective Date, the Defendant shall pay the employer-share taxes, as determined by the Claims Administrator and confirmed by Defendant, by single check or wire transfer to the trust account of the Claims Administrator.

(v) Plaintiffs' Counsel, on behalf of the Plaintiffs, acknowledges and agrees that each Plaintiff will be solely responsible for all taxes; interest and penalties due with respect to any payment received pursuant to this Agreement (other than taxes specified in Paragraph 6.2(f)(iv)) and will indemnify, defend and hold Defendant and the Claims Administrator harmless from and against any and all taxes, interest, penalties, attorney's fees and other costs imposed on Defendant or the Claims Administrator as a result of a Plaintiff's failure to timely pay such taxes.

VII. RELEASE

7.1 Plaintiffs for themselves, and their spouses and families, attorneys (if any), agents, executors, administrators, personal representatives, heirs, successors, any future estates, assigns and beneficiaries, and any and all of them (collectively, the "Releasers"), voluntarily and with the advice of counsel, fully and forever release, acquit, and discharge the Defendant, its present or former officers, directors, subsidiaries, affiliates, partners, employees, agents, attorneys, accountants, executors, administrators, personal representatives, heirs, successors and assigns, and any or all of them and all persons acting by, through, under, or in concert with any of them (collectively, the "Releasees"), in their personal, individual, official and/or corporate capacities, from any and all FLSA and state wage and hour claims, whether known or unknown, whether contingent or non-contingent, specifically asserted or not, which the Releasers, or any of them, may assert anywhere in the world against the Releasees, or any of them, relating to FLSA violations

or similar wage and hour claims under state law (including, but not limited to, New Jersey Wage and Hour Law, N.J. Stat. Ann. § 34:11-56a *et seq.*, California Labor Code, §§218 and 1194, California Business & Professions Code §17200 *et seq.*) arising up to and including the date of approval of this Settlement by the Court for the time period Plaintiffs worked as employees for Defendant. This release does not extend to claims for workers' compensation, claims brought under Title VII of the Civil Rights Act of 1964 ("Title VII") or other statutory or common law claims unrelated to the asserted nonpayment of compensation for hours worked.

7.2 All checks issued to Plaintiffs shall contain, on the back of the check, the following limited endorsement:

RELEASE OF CLAIMS

> I understand that I have consented to join in the case *Garcia, et al. v. Freedom Mortgage Corporation*, Civil Action No. 09-2668(JEI), now pending in the United States District Court for the District of New Jersey, and agree to be bound by the Settlement Agreement negotiated by Plaintiffs' Counsel in that case.
>
> I irrevocably and unconditionally waive, release, extinguish, acquit, and forever discharge any claim I might have for unpaid wages or overtime pay, or any other claim for violations of Federal or state wage and hour laws.

7.3 Upon the negotiation or endorsement of a settlement check, each Plaintiff shall be deemed to, and shall have, released and discharged the Defendant with respect to all released claims as set forth in Paragraph 7.1 above. In addition, Plaintiffs' counsel's execution of this Agreement, when approved by the Court, shall fully effectuate the release provisions of Paragraph 7.1 above to which each Plaintiff is bound regardless of whether such Plaintiff negotiates a settlement check.

VIII. DISMISSAL OF LITIGATION

8.1 Plaintiffs agree to the dismissal of the Litigation against the Defendant, with prejudice.

8.2 Plaintiffs accept the benefits provided herein as consideration in full and complete satisfaction and release of claims asserted in the Litigation or covered in this Agreement. Based on the provisions contained herein, Plaintiffs agree that the Litigation shall be dismissed with prejudice with respect to their claims.

IX. RETALIATION

9.1 The Company agrees not to retaliate against any Plaintiff employed by the Company for pursuing claims in the Litigation, providing deposition testimony in the Litigation, or for otherwise participating in the Litigation.

X. RESOLUTION OF FUTURE DISPUTES

10.1 Plaintiffs confirm that, other than the Litigation, there is no claim, charge, complaint, or action currently pending that concerns allegations based on Plaintiffs' claims relating to wage and hour compensation or retaliation related to wage and hour claims for the times Plaintiffs work or worked for Defendant as of the date of this Agreement. In the event that any such claim, charge, complaint or action is filed, Plaintiffs shall not be entitled to recover any damages or other relief therefrom, including costs and attorneys' fees. This Agreement is intended to resolve all wage and hour related issues, known or unknown, pled or otherwise, as of the date of this Agreement.

10.2 The United States District Court for the District of New Jersey shall have continuing jurisdiction to construe, interpret and enforce the provisions of this Agreement, and to hear and adjudicate any dispute or litigation arising from this Agreement or the issues of law and facts asserted in or related to the instant actions.

XI. PARTIES' AUTHORITY

11.1 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the parties hereto to the terms and conditions hereof.

11.2 All of the parties acknowledge that they have been represented by competent and experienced counsel throughout all negotiations which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared this Agreement.

XII. MUTUAL FULL COOPERATION

12.1 The parties agree to use their best efforts and to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

XIII. ENFORCEMENT ACTIONS

13.1 In the event that one or more of the parties to this Agreement institutes any legal action, arbitration, or other proceeding against any other party or parties to enforce the provisions of this Agreement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs; including expert witness fees incurred in connection with any enforcement actions.

XIV. MODIFICATION

14.1 This Agreement and its attachments may not be changed, altered, or modified, except in writing and signed by the parties hereto, and approved by the Court.

XV. ENTIRE AGREEMENT

15.1 This Agreement and its attachments constitute the entire agreement between the parties concerning the subject matter hereof. No extrinsic oral or written representations or terms shall modify, vary or contradict the terms of this Agreement. In the event of any conflict between this Agreement and any other settlement-related document, the parties intend that this Agreement shall be controlling.

XVI. CHOICE OF LAW/JURISDICTION

16.1 This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the State of New Jersey, both in its

procedural and substantive aspects, and shall be subject to the continuing jurisdiction of the United States District Court for the District of New Jersey. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Agreement or any specific term or condition thereof.

XVII. COUNTERPARTS

17.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

XVIII. VOIDING THE AGREEMENT

18.1 In the event this Agreement, or any amended version agreed upon by the parties does not obtain judicial approval for any reason, this Agreement shall be null and void in its entirety, unless expressly agreed in writing by all parties.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Dated: May 10, 2012

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By: _____

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Dated: May 11, 2012

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JORGE GARCIA, et al., Plaintiffs, v. FREEDOM MORTGAGE CORPORATION, Defendant.	:	Civil Action No. 09-2668 (JEI) *Fairness Hearing Requested*

AGREED ORDER OF DISMISSAL WITH PREJUDICE

This cause having come before the Court upon the joint request of Plaintiffs and Defendant, the Court having been advised of and considered the Compromise Settlement Agreement entered into by and among Plaintiffs and Defendant that has resulted from a voluntary mediation, and, upon the joint application of Plaintiffs and Defendant, by their

Attorneys, seeking review and approval by the Court thereof, and the entire record therein, it is hereby ORDERED, ADJUDGED AN DECREED as follows:

1. The court approves and adopts as stated the terms of the Compromise Settlement Agreement entered into between and among the parties to the instant action, recognizing that their has been and there is no admission of liability by Defendant, same being expressly denied, but as it reflects a fair, reasonable, and appropriate compromise deemed in the best interest of the parties thereto, and in accordance with law.

2. Consistent with that Agreement, this action is hereby dismissed with prejudice. The Court will retain jurisdiction over the parties to the Agreement for the purpose of interpretation and compliance with the Agreement and this Agreed Order of Dismissal with Prejudice.

So ORDERED this _____ day of _____, 2012

_____
JOSEPH E. IRENAS, S.U.S.D.J.