

## **Chapter 18      Settlement Agreement With Mortgage Servicing Company to Resolve Billing Errors**

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This chapter contains a settlement agreement between a homeowner and a mortgage servicing company and the mortgage holder to resolve billing errors by the mortgage servicing company.

## SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

### 1. PARTIES

This Settlement Agreement and General Release of Claims (the "Agreement") is made and entered into on the last day set forth on the signature page hereto by [Consumers] ("[CONSUMERS]"); JPMorgan Chase Bank (f/k/a The Chase Manhattan Bank), acting solely in their capacity as trustee for IMC Home Equity Loan Trust 1998-3 (the "BANK"), and Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corp. ("SPS") for the purpose of resolving by compromise settlement, all claims, liabilities, and disputes arising out of a dispute between the Parties. In the remainder of this Agreement, [CONSUMERS], the BANK, and SPS shall be referred to collectively as the "Parties".

### 2. RECITALS

This Agreement is entered into with reference to the following facts:

A. A dispute exists among the Parties concerning the application of payments and loan servicing under the note ("Note") and mortgage ("Mortgage"), a/k/a loan #300000000, and for alleged violations of law regarding the application of payments and loan servicing (the "Dispute") serviced by SPS on behalf of the BANK. The Dispute does not refer to issues or claims regarding the loan origination or any other matter that does not pertain to the application of payments and loan servicing up to the date of the Agreement.

B. The Parties, without in any way conceding the validity or sufficiency of any claim or contention of any or all of the Parties, now desire to fully compromise, finally settle, and fully release all claims, disputes and differences related to the Dispute.

### 3. AGREEMENTS, RELEASES AND PROMISES

THEREFORE, in consideration of the facts and mutual general releases and promises contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each party hereto, the Parties promise and agree as follows:

1. Except as set forth herein, this Agreement terminates all claims, causes of action, disputes, controversies and/or disagreements between the BANK or SPS and the [CONSUMERS] as of the date of this Agreement, all as is more fully set forth herein.

2. SPS agrees to pay [CONSUMERS] the sum of Eight Thousand (\$8,000.00) Dollars (the "Payment") within ten (10) days of receiving a fully executed form of this Agreement from [CONSUMERS]. This sum represents reimbursement of fees in the amount of \$750.00 to [CONSUMERS] for amounts they paid to employ a certified public accountant to review their payment history and evaluate the application of payments they made on the loan by BANK. In addition, the sum of \$8,000 includes reimbursement of medical expenses incurred by

[CONSUMERS] including expenses contributable to emotional distress in the amount of \$180.00.

3. SPS agrees that Escrow Advances in the amount of \$1,558.09 and Corporate Advances of \$349.95 were waived on May 11, 2005. In addition, SPS will waive Interest on Advances in the amount of \$2.57.

4. It is understood and agreed by the parties that the Agreement and the mortgage modifications referred to in paragraph 3 in the Agreement totaling \$1,910.61 reflect settlement of disputed legal claims and do not involve a discharge or cancellation of any debt for purposes of 26 U.S.C. Section 61(a)(12). Consequently, BANK agrees that it need not and will not report this amount as resulting in any income to [CONSUMERS] to any taxing authority. Accordingly, the parties agree it would be improper to issue a 1099 as there has been no "cancellation of indebtedness" income pursuant to 26 U.S.C. § 5060P.

The parties further acknowledge that the Settlement does not involve the cancellation of any debt since the Dispute regards the application of payments and loan servicing. Accordingly, the parties agree it would be improper to issue a 1099 as there has been no "cancellation of indebtedness" income pursuant to 26 U.S.C. § 5060P.

5. SPS agrees that the current unpaid principal balance is \$34,431.92. The unpaid principal balance, plus interest pursuant to the note, represents the total amount due and owing on the account, there are no outstanding fees, costs, advances, or any other sums due on the [CONSUMERS] account as of the date of the Agreement. In addition, no fees, costs, advances or other sums will be attributed to this account in connection with the Dispute. The next principal, interest and escrow payment of \$475.76 is due on June 4, 2005, which includes interest due in the amount of \$308.45.

6. SPS further agrees that it has submitted a request to each credit bureau reporting agency to which it reports (Transunion, Experian, Equifax and Innovis) (referred to as "CRAs") to remove all delinquencies reported from June, 2001 through the present month of May, 2005, which will result in the account being reported as current and in bankruptcy for said time period for all parties. Please see attached letter dated May 12, 2005 and Universal Data Form dated May 12, 2005. In the event that the credit correction request is not processed by the credit reporting agencies as requested, SPS will resubmit our original request to the same four (4) agencies as listed above. [CONSUMERS] acknowledges that it can take 30 to 60 days for the credit reporting agencies to update their credit report. Should the CRA's fail to properly process the information submitted to them by SPS regarding correction of [CONSUMERS]'s' credit information, SPS agrees to fully cooperate with [CONSUMERS] and continue to work with the CRA's until the matter is finally resolved in favor of [CONSUMERS].

7. [CONSUMERS] further agrees to release and forever discharges the BANK and SPS from any and all state or federal claims, demands or causes of action asserted, existing or claimed to exist against either or both of them by reason of, arising from or related to the Dispute.

8. [CONSUMERS] does further release and forever discharge the BANK and SPS and each of the officers, directors, shareholders, partners, attorneys, predecessors, successors, representatives, insurers, assignees, agents, employees, executors, administrators, heirs, and all persons acting by, through, or in any way on behalf of the BANK and SPS, of and from any and all claims, debts, defenses, liabilities, costs, attorneys' fees, actions, suits at law or equity, demands, contracts, expenses, damages, whether general, specific, punitive, exemplary, contractual or extra-contractual, and causes of action of any kind or nature which [CONSUMERS] may now have or claim to have against the BANK and SPS, including without limitation all claims or causes of action which in any way, directly or indirectly, or in any other way arises from or are connected with or which could have been asserted in connection with the Dispute, and any claim, cause of action, damages, promises or demands which could have been asserted in the Dispute; and the Parties further covenant and agree that this Agreement may be pleaded or asserted by or on behalf of the BANK and SPS as a defense and complete bar to any action or claim that may be brought against or involving the BANK and SPS by anyone acting or purporting to act on behalf of [CONSUMERS] with respect to any of the matters within the scope of this Agreement excepting only the obligations of the Parties under this Agreement. This full and final release shall cover and shall include and does cover and does include any and all known or future damages not now known to any of the parties hereto, but which may later develop or be discovered, including the effects and consequences thereof, and including all causes of action therefore which arise out of the same facts as were alleged or could have been alleged in the Dispute. This release does not pertain to claims, action or incidents unrelated to the Dispute.

9. This Agreement is entered into by the Parties for the purpose of compromising and settling the matters in the Dispute between and among them. This Agreement does not constitute, and shall not be construed as, an admission by any Party of the truth or validity of any claims asserted or contentions advanced by any other Party.

10. It is expressly understood by the Parties that each Party shall bear its own costs in connection with the Dispute and this Agreement and the Parties waive and release any claims they otherwise have or may have had to such costs and attorneys' fees.

11. This Agreement is entered into in the state of New York and the Agreement, and any rights, remedies, or obligations provided for in this Agreement, shall be construed and enforced in accordance with the laws of New York.

12. This Agreement shall be construed as if all Parties jointly prepared it, and any uncertainty or ambiguity in the Agreement shall not be interpreted against any one Party.

13. If any action is brought to enforce this Agreement, or is brought in connection with any dispute arising out of this Agreement or the claims which are the subject of this Agreement, the prevailing Party or Parties shall be entitled to recover damages, fees and other costs incurred in such litigation which they may prove are the direct and proximate result of any breach hereof in addition to any other relief which that Party or Parties may be entitled to by law.

14. If [CONSUMERS] believes that SPS has not complied with any terms of this Agreement, [CONSUMERS] will notify SPS of any alleged violation within a reasonable time period of the discovery of the alleged violation, not to exceed six (6) months. SPS will respond to the allegations and, if necessary, rectify any violation within ten (10) business days of receiving notification by [CONSUMERS]. Notification of an alleged violation of this Agreement will be effectuated by [CONSUMERS], or their counsel, by contacting SPS's Chief Compliance Officer or General Counsel in writing at 3815 South West Temple, Salt Lake City, UT, 84115. If SPS dissolves or eliminates the positions of Chief Compliance Officer and General counsel, it shall be directed to the President's Office. If no longer serviced by SPS, shall be to the same offices of the new servicer at that time or to the owner of the note at JP Morgan Chase, corporate legal department or similar office if a different owner.

15. SPS agrees that if any violation of the terms of this Agreement is not rectified within ten (10) business days of the date SPS is notified by [CONSUMERS], SPS will incur an automatic penalty, payable to [CONSUMERS]. The penalty shall be \$20.00 per day, including non-business days such as weekends and holidays, and shall accrue daily from the expiration of the ten (10) business day period SPS has to correct any violation until the date the violation is corrected and SPS has notified [CONSUMERS] in writing and with verification that the violation has been corrected. This penalty shall be automatic and shall be paid by SPS to [CONSUMERS] without any need on the part of [CONSUMERS] to bring an enforcement action. The penalty is in addition to and in no way affects the rights of [CONSUMERS] to pursue a compliance action if necessary, pursuant to paragraph 13. If SPS's Chief Compliance Officer disagrees that the alleged violation of the Agreement occurred and provides written evidence thereof within the ten (10) day period, no penalty shall be due.

16. The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions or parts.

17. The specific terms of this Agreement will be kept confidential and the Parties and their counsel agree not to disclose or publish the terms, conditions or covenants referred to in this Agreement, except as follows:

A. As is required to comply with any applicable rules, statutes or regulations of any governmental agency; or

B. As may be reasonably necessary to conduct any litigation arising out of or concerning this Agreement.

18. This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. All modifications must be in writing and duly executed by all Parties.

19. The Parties represent and warrant to each other that each is the sole and lawful owner of all right, title and interest in and to every claim and other matter which each releases in this Agreement and that they have not previously assigned or transferred, or purported to do so, to any person or other entity any right, title or interest in any such claim or other matter. In the event that such representation is false, and any such claim or matter is asserted against either Party by anyone who is the assignee or transferee of such a claim or matter, then the Party who assigned or transferred such claim or matter shall fully indemnify, defend and hold harmless the Party against whom such claim or matter is asserted and its successors from and against such claim or matter.

20. The Parties acknowledge that this Agreement is executed voluntarily by each of them, without any duress or undue influence on the part of, or on behalf of any of them. The Parties further acknowledge that they have or had the opportunity for representation in the negotiations for, and in the performance of, this Agreement by counsel of their choice and that they have read this Agreement, and have had it fully explained to them by their counsel and that they are fully aware of the contents of this Agreement and its legal affect.

21. This Agreement shall be effective as a full and final accord and satisfaction and release of each matter in connection with those matters set forth herein above.

22. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, agents, representatives, successors, and assignees.

23. This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals.

24. This Agreement constitutes that there is no other agreement, written or oral, expressed or implied between the parties with respect to the subject matter of this Agreement and the Parties declare and represent that no promise, inducement or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

25. The individuals whose signatures are affixed to this Agreement in a representative capacity represent and warrant that they are authorized to execute the Agreement on behalf of and to bind the entity on whose behalf the signature is affixed.

26. This Agreement may be executed in counterpart facsimile signatures and all such counterparts shall constitute a single form of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this document to be executed as of the last day set forth below.