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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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F & N Enterprises, dba Northern Arizona)  
Sign and Graphics, Inc., an Arizona)  
Corporation,

No. CV 09-8175 PCT-JAT

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**ORDER**

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Plaintiff,

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vs.

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Federal Deposit Insurance Corporation as)  
Receiver for First State Bank, an Arizona)  
corporation,

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Defendant.

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Pending before the Court is Defendant Federal Deposit Insurance Corporation’s (“FDIC”) Motion for Summary Judgment (Doc. # 15). For the reasons that follow, the Court grants the FDIC’s motion.

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**I. Background**

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The material facts are not in dispute. In 2007, Plaintiff designed, manufactured, and installed certain signs for First State Bank. After First State Bank refused to pay for Plaintiff’s work, Plaintiff filed a lawsuit against First State Bank. Plaintiff’s lawsuit was subjected to compulsory arbitration, which in October 2009 resulted in an award in Plaintiff’s favor.

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In September 2009, the Superintendent of the Arizona Department of Financial Institutions closed First State Bank. Also during September 2009, the Maricopa County

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1 Superior Court appointed the FDIC as receiver for First State Bank. In October 2009,  
2 Plaintiff filed a proof of claim with the FDIC for the arbitration award in the amount of  
3 \$25,816.62. In December 2009, the FDIC issued a Receiver's Certificate to Plaintiff for the  
4 full amount of the claim. Plaintiff disputes that the Receiver's Certificate constitutes  
5 payment for the arbitration award.

## 6 **II. Analysis**

7 Summary judgment is appropriate when "the pleadings, depositions, answers to  
8 interrogatories, and admissions on file, together with affidavits, if any, show that there is no  
9 genuine issue as to any material fact and that the moving party is entitled to summary  
10 judgment as a matter of law." FED. R. CIV. P. 56(c). Thus, summary judgment is mandated,  
11 "against a party who fails to make a showing sufficient to establish the existence of an  
12 element essential to that party's case, and on which that party will bear the burden of proof  
13 at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

14 FDIC argues that the issuing of the Receivership Certificate to Plaintiff in the full  
15 amount of the arbitration award satisfies Plaintiff's claim. In response, Plaintiff argues that  
16 the Receivership Certificate is only a formal record of the claim, and that Plaintiff has not  
17 "received one penny of the \$25,816.62 owed to it." (Doc. # 17 at p. 4.) Based upon the  
18 Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12  
19 U.S.C. § 1821 *et seq.*, and the Ninth Circuit Court of Appeal's interpretation of FIRREA, the  
20 Court agrees with the FDIC.

21 It is undisputed that the FDIC has issued a Receivership Certificate to Plaintiff for the  
22 full amount of the arbitration award. The only issue is whether the Receivership Certificate  
23 constitutes payment such that Plaintiff's claim is satisfied.

24 In 1989, in response to the nation's banking crisis, Congress enacted FIRREA. "The  
25 statute 'allows the FDIC to act as receiver or conservator of a failed institution for the  
26 protection of depositors and creditors,' establishing a scheme for dealing with claims against  
27 the failed institution." *Battista v. Fed. Deposit Ins. Corp.*, 195 F.3d 1113, 1116 (9th Cir.  
28 1999) (quoting *Sharpe v. Fed. Deposit Ins. Corp.*, 126 F.3d 1147, 1154 (9th Cir. 1997)).

1 Section 1821(d) outlines the powers and duties of the FDIC as receiver. The FDIC is  
2 authorized to determine and pay claims in accordance with section 1821(d) against the  
3 financial institution placed into receivership. In *Resolution Trust Corp. v. Titan Financial*  
4 *Corp.*, the Ninth Circuit addressed the precise issue of whether the FDIC could issue a  
5 receivership certificate to pay creditors in lieu of a cash payment: “FIRREA does not indicate  
6 whether a failed institution or its receiver may use a Certificate of Award to pay creditors.  
7 We hold that it may.” 36 F.3d 891, 892 (9th Cir. 1994). *See also Id.* at 893 (“We hold that  
8 [Defendant] is entitled only to a Certificate of Award, not ‘cash or its equivalent.’  
9 Accordingly, the RTC, as receiver, may pay Sellan’s attorney’s fees on appeal in the form  
10 of a Certificate of Award . . .”). The Ninth Circuit then affirmed its holding in *Resolution*  
11 *Trust Corp.*, by stating that “[t]here is no question that the FDIC may pay creditors with  
12 receiver’s certificates instead of with cash.” *Battista v. F.D.I. C.*, 195 F.3d 1113, 1116 (9th  
13 Cir. 1999) (citing *Resolution Trust Corp.*, 36 F.3d at 892).

14 In response, Plaintiff cites only *FDIC v. Grillo*, 788 F.Supp. 641 (D. N.H. 1992) for  
15 the proposition that it may continue this action through the court process. *Grillo* does not  
16 address whether a receiver’s certificate constitutes payment in full. Rather, *Grillo* deals with  
17 an issue of subject matter jurisdiction not presently at issue in this action. As such, *Grillo*  
18 is inapposite.

19 Given the Ninth Circuit’s guidance on this issue, the Court finds that the Receivership  
20 Certificate constitutes payment in full under FIRREA such that Plaintiff’s claim is satisfied.  
21 Under FIRREA and Ninth Circuit precedent, Plaintiff is not entitled to a cash payment.  
22 Although the Court recognizes the resulting harshness that is likely to follow from such a  
23 ruling, this Court is not at liberty to deviate from the dictates of Congress and the Ninth  
24 Circuit.

25 Plaintiff also argues that the Receivership Certificate itself does not state that it  
26 constitutes payment in full. Whether the Receivership Certificate states that payment has  
27 occurred does not alter the legal effect of such a certificate. Once the FDIC issued the  
28 Receivership Certificate, Plaintiff’s claim became paid in full.

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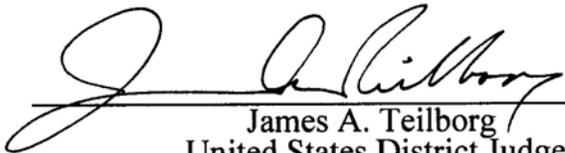
Accordingly,

**IT IS ORDERED** that Defendant Federal Deposit Insurance Corporation's Motion for Summary Judgment (Doc. # 15) is granted.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment in favor of Defendant and against Plaintiff, with Plaintiff to take nothing.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall close this case.

DATED this 2<sup>nd</sup> day of June, 2010.

  
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James A. Teilborg  
United States District Judge