



JS-6

1 **ROSMAN & GERMAIN LLP**  
 2 Daniel L. Germain (State Bar No. 143334)  
 3 16311 Ventura Boulevard, Suite 1200  
 4 Encino, CA 91436-2152  
 5 Telephone: (818) 788-0877  
 6 Facsimile: (818) 788-0885  
 7 Email: germain@lalawyer.com

8 *Liaison Counsel for Named Plaintiffs and the Proposed Class*

9 *[Additional counsel listed on signature page]*

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

12 THOMAS YOUNG and GREGORY )  
 13 FILZEN, individually and on behalf )  
 14 of all others similarly situated, ) Case No.: 10-cv-8914-ODW-MAN

15 Plaintiffs, )

16 v. )

17 BABETTE E. HEIMBUCH, JAMES )  
 18 P. GIRALDIN, GISSELLE )  
 19 ACEVEDO, BRIAN E. ARGRETT, )  
 20 JESSE CASSO, JR., CHRISTOPHER )  
 21 M. HARDING, WILLIAM P. )  
 22 RUTLEDGE, STEVEN L. )  
 23 SOBOROFF, ADMINISTRATIVE )  
 24 COMMITTEE OF THE FIRST )  
 25 FEDERAL BANK OF CALIFORNIA )  
 26 EMPLOYEE STOCK OWNERSHIP )  
 27 PLAN and DOES 1-10, )

28 Defendants. )

**ORDER AND FINAL JUDGMENT**

1 This *Action* came on for hearing on \_\_\_\_\_ to determine the  
2 fairness of the proposed settlement (the "*Settlement*") presented to the Court on  
3 \_\_\_\_\_ [date] and the subject of this Court's Order Granting Preliminary Approval  
4 of Class Action Settlement, Preliminarily Certifying a Class for Settlement Purposes,  
5 Approving Form and Manner of Class Notice, and Setting Date for Hearing on Final  
6 Approval of Settlement (Court File No. \_\_\_\_). The issues having been duly heard and a  
7 decision having been duly reached,

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

9 Except as otherwise defined herein, all capitalized and/or italicized terms used  
10 in this Order and Final Judgment shall have the same meanings as ascribed to them in  
11 the *Settlement Agreement* between *Named Plaintiffs* and *Defendants*.

12 1. The *District Court* has jurisdiction over the subject matter of the *Action*  
13 and over all parties to the *Action*, including all members of the *Settlement Class*.

14 2. For the sole purpose of settling and resolving the *Action*, the *District*  
15 *Court* certifies this action as a Class Action under FED. R. CIV. P. 23(a) and 23(b)(1).  
16 The *Settlement Class* is defined as:

17 All *Persons*, excluding the *Defendants* and their *Immediate*  
18 *Family Members*, who were participants in or beneficiaries  
19 (including alternate payees) of the *Plan* at any time  
20 between January 26, 2007 and August 5, 2011 and whose  
21 accounts included investment in *Company Stock* at any  
22 point during that time period.

23 3. Thomas Young and Gregory Filzen (the "*Named Plaintiffs*") are  
24 appointed as class representatives, Kessler Topaz Meltzer & Check, LLP, is appointed  
25 as *Class Counsel* and Rosman & Germain LLP is appointed as *Liaison Counsel*  
26 pursuant to FED. R. CIV. P. 23(g).

27 4. The Court finds for the sole purpose of settling and resolving the *Action*  
28 that:

1 (a) The numerosity requirement of FED. R. CIV. P. 23(a)(1) is satisfied  
2 because the *Settlement Class* is so numerous that it is impractical to bring all  
3 *Settlement Class* members before the *District Court* individually.

4 (b) The commonality requirement of FED. R. CIV. P. 23(a)(2) is  
5 satisfied because the allegations of the *Settlement Class* present common questions of  
6 law or fact, including:

7 (i) Whether the *Defendants* were fiduciaries and breached  
8 fiduciary obligations to the *Plan* and participants by causing the *Plan* to offer  
9 *Company Stock* as an investment option for the *Plan*;

10 (ii) Whether the *Defendants* breached fiduciary obligations to  
11 the *Plan* and its participants by providing incomplete and inaccurate information to  
12 participants regarding the propriety of investing in *Company Stock*;

13 (iii) Whether certain *Defendants* breached fiduciary obligations  
14 to the *Plan* and its participants by failing to monitor other *Defendants*; and

15 (iv) Whether the alleged breaches of fiduciary duty by the  
16 *Defendants* caused the *Plan* and its participants and beneficiaries to suffer losses.

17 (c) The typicality requirement of FED. R. CIV. P. 23(a)(3) is satisfied  
18 because the claims of the *Named Plaintiffs* arise from the same alleged course of  
19 conduct that gives rise to the claims of the *Settlement Class*, and the *Named Plaintiffs*'  
20 claims are based on the same legal theory as those of the *Settlement Class*. The  
21 *Named Plaintiffs* allege that they were *Plan* participants during the *Class Period* with  
22 a *Plan* accounts that included investments in *Company Stock*, that the *Plan's*  
23 fiduciaries treated them and all other *Plan* participants alike, and that *Plan*-wide relief  
24 is necessary and appropriate under *ERISA*. Under these circumstances, for purposes  
25 of the *Settlement* only, and subject to the foregoing, the claims asserted by the *Named*  
26 *Plaintiffs* are sufficiently typical of the claims asserted by the *Settlement Class* as a  
27 whole to satisfy FED. R. CIV. P. 23(a)(3).

28

1 (d) The adequacy requirement of FED. R. CIV. P. 23(a)(4) is satisfied.  
2 For the purposes of this *Settlement*, the *District Court* finds that the *Named Plaintiffs*  
3 have no conflicting interests with absent members of the *Settlement Class*. Further,  
4 the *District Court* is satisfied that *Class Counsel* are qualified, experienced, and are  
5 further prepared to represent the *Settlement Class* to the best of their abilities.

6 (e) The requirements of FED. R. CIV. P. 23(b)(1) are also satisfied.  
7 Given the *Plan*-representative nature of *Named Plaintiffs'* breach of fiduciary duty  
8 claims, there is a risk that failure to certify the *Settlement Class* would leave future  
9 plaintiffs without relief and there is also a risk of inconsistent dispositions that might  
10 prejudice the *Defendants*. This case is appropriate for class certification, for the  
11 purposes of this *Settlement*, under FED. R. CIV. P. 23 (b)(1).

12 (f) The *District Court* has also considered each of the elements  
13 required by FED. R. CIV. P. 23(g) in order to ensure that *Class Counsel* will fairly and  
14 adequately represent the interests of the *Settlement Class*. *Class Counsel* have done  
15 the work necessary to identify or investigate potential claims in the *Action*, to  
16 investigate the allegations made in the *Complaint*, including, reviewing publicly  
17 available information, reviewing documents and materials uncovered in their  
18 investigation, and representing the interests of the *Settlement Class* during the  
19 litigation. *Class Counsel* have substantial experience in handling class actions and  
20 claims of the type asserted in this *Action*. *Class Counsel* have also demonstrated  
21 extensive knowledge of the applicable law. The *District Court* concludes that *Class*  
22 *Counsel* have fairly and adequately represented the interests of the *Settlement Class*.

23 (g) The *Settlement Class* has received proper and adequate notice of  
24 the *Settlement Agreement*, the *Fairness Hearing*, *Class Counsel's* application for  
25 attorneys' fees and expenses and for *Case Contribution Awards* to the *Named*  
26 *Plaintiffs*, and the *Plan of Allocation*, such notice having been given in accordance  
27 with the Order Granting Preliminary Approval of Class Action Settlement,  
28

1 Preliminarily Certifying a Class for Settlement Purposes, Approving Form and  
2 Manner of Class Notice, and Setting Date for Hearing on Final Approval of  
3 Settlement (Court File No. \_\_\_\_). Such notice included individual notice to all  
4 members of the *Settlement Class* who could be identified through reasonable efforts,  
5 as well as notice through a dedicated website on the internet, and provided valid, due,  
6 and sufficient notice of these proceedings and of the matters set forth in this Order,  
7 and included sufficient information regarding the procedure for the making of  
8 objections. Such notice fully satisfied the requirements of FED. R. CIV. P. 23 and the  
9 requirements of due process.

10 5. The Court hereby approves the *Settlement Agreement* and orders that the  
11 *Settlement Agreement* shall be consummated and implemented in accordance with its  
12 terms and conditions.

13 6. Pursuant to FED. R. CIV. P. 23(e), the Court finds that the *Settlement*  
14 embodied in the *Settlement Agreement* is a fair, reasonable, and adequate settlement  
15 and compromise of the claims asserted in this *Action*. Specifically, the Court finds  
16 that:

17 (a) The *Settlement* was negotiated vigorously and at arm's-length by  
18 counsel for the *Defendants*, on the one hand, and the *Named Plaintiffs* and *Class*  
19 *Counsel* on behalf of the *Settlement Class*, on the other hand;

20 (b) This *Action* settled after *Defendants* had answered the operative  
21 complaint in this matter;

22 (c) *Named Plaintiffs* and *Defendants* had sufficient information to  
23 evaluate the settlement value of the *Action*;

24 (d) If the *Settlement* had not been achieved, the *Parties* faced the  
25 expense, risk, and uncertainty of extended litigation;

26 (e) The amount of the *Settlement* – eight hundred thousand dollars  
27 (\$800,000) – is fair, reasonable, and adequate;

28

1 (f) At all times, the *Named Plaintiffs* acted independently of  
2 *Defendants* and in the interest of the *Settlement Class*; and

3 (g) The Court has duly considered and rejected any objections to the  
4 *Settlement* that were filed.

5 7. The *Plan of Allocation* is approved as a fair and reasonable plan to  
6 restore losses to *Settlement Class* members on account of investments in *Company*  
7 *Stock* during the *Class Period*, and *Class Counsel* and the designated *Settlement*  
8 *Administrator* are directed to administer the *Plan of Allocation* in accordance with its  
9 terms and provisions.

10 8. The *Action* is hereby dismissed with prejudice, each party to bear his, her,  
11 or its own costs, except as expressly provided herein.

12 9. Upon the *Effective Date*, the following claims are released by operation  
13 of this Order and *Final Judgment*, as set forth in Section 3 of the *Settlement*  
14 *Agreement*:

15 (a) *Named Plaintiffs' the Settlement Class', and the Plan's Releases.*  
16 The *Named Plaintiffs*, The *Settlement Class*, and the *Plan* shall and hereby do  
17 conclusively, absolutely, unconditionally, irrevocably, and forever release and  
18 discharge the *Plaintiffs' Released Persons* from any and all *Plaintiffs' Released*  
19 *Claims*. The *Settlement Agreement* defines *Plaintiffs' Released Claims* as "any and all  
20 *Claims* of any nature whatsoever, whether individual, representative, or derivative,  
21 known or unknown, accrued or unaccrued (including *Unknown Claims* and *Claims* for  
22 any and all losses, damages, unjust enrichment, attorney's fees, litigation costs,  
23 injunction, declaration, contribution, indemnification or any other type of legal or  
24 equitable relief whether known, unknown, unsuspected), by or on behalf of the *Plan*,  
25 the *Named Plaintiffs*, and each and every member of the *Settlement Class*, including  
26 their respective heirs, beneficiaries, executors, administrators, past and present  
27 partners, agents, attorneys, *Successors*, and assigns, which are based upon, arise out

28

1 of, relate in any way to, directly or indirectly, the alleged conduct, omissions,  
2 breaches, duties, actions, transactions, occurrences, statements, representations,  
3 misrepresentations, omissions, allegations, facts, events, or any other matters that  
4 were, could have been, or in the future can or might be alleged or asserted: (a) in the  
5 *Action* and (b) under *ERISA* based on or relating to investment in *FirstFed Stock* by or  
6 through the *Plan* during the *Class Period*.”

7 (b) Defendants’ Releases. *Defendants* shall and hereby do  
8 conclusively, absolutely, unconditionally, irrevocably, and forever release and  
9 discharge the *Defendants’ Released Persons* from any and all *Defendants’ Released*  
10 *Claims*. The *Settlement Agreement* defines *Defendants’ Released Claims* as “any and  
11 all *Claims* relating to the institution or prosecution of the *Action* or relating to the  
12 settlement of any of *Plaintiffs’ Released Claims*.”

13 (c) Scope of Releases.

14 (i) Nothing in the *Settlement Agreement* shall release or  
15 discharge any *Claim* that (a) has been or could be asserted directly or derivatively by  
16 any member of the *Settlement Class* or the *Plan* under the federal securities laws or  
17 the securities laws of any state regarding the purchase or sale of any *FirstFed* security  
18 or debt instrument.

19 (ii) The release and discharge set forth in Sections 3.1 and 3.2 of  
20 the *Settlement Agreement* shall not include the release of any rights or duties of the  
21 *Parties* arising out of the *Settlement Agreement*, including the express warranties and  
22 covenants contained therein.

23 (iii) *Named Plaintiff*, on her own behalf and on behalf of all  
24 members of the *Settlement Class* and the *Plan*, and *Defendants*, hereby expressly  
25 waive any and all rights and benefits respectively conferred upon her and them by the  
26 provisions of Section 1542 of the California Civil Code and all similar provisions of  
27

28

1 the statutory or common laws of any other state, territory, or other jurisdiction.

2 Section 1542 reads in pertinent part:

3           A general release does not extend to claims that the creditor  
4           does not know or suspect to exist in his or her favor at the  
5           time of executing the release, which if known by him or her  
6           must have materially affected his or her settlement with the  
7           debtor.

8           *Named Plaintiffs*, on their own behalf and on behalf of all members of the  
9           *Settlement Class* and the *Plan*, and *Defendants* each hereby acknowledge that the  
10          foregoing waiver of the provisions of Section 1542 of the California Civil Code and  
11          all similar provisions of the statutory or common law of any other state, territory, or  
12          other jurisdiction was bargained for.

13                   (d)   Covenants Not to Sue.

14                   (i)   From and after the *Effective Date*, *Named Plaintiffs* and the  
15                   *Settlement Class* are, without limitation, precluded, estopped, and forever barred from  
16                   bringing or prosecuting any *Claim*, individual or derivative, released under Paragraph  
17                   9(a) above against any of *Plaintiffs' Released Persons* or the *Plan*. The foregoing  
18                   covenant and agreement shall be a complete defense to any such *Claims* against any of  
19                   *Plaintiffs' Released Persons* or the *Plan*.

20                   (ii) From and after the *Effective Date*, *Defendants* are, without  
21                   limitation, precluded, estopped, and forever barred from bringing or prosecuting any  
22                   *Claim*, individual or derivative, released under Paragraph 9(b) above against any of  
23                   *Defendants' Released Persons*, the *Plan*, or any *Defendant*.

24           10.   The *District Court* shall retain exclusive jurisdiction to resolve any  
25           disputes or challenges that may arise as to the performance of the *Settlement*  
26           *Agreement* or any challenges as to the performance, validity, interpretation,  
27           administration, enforcement, or enforceability of the *Class Notice*, this *Final*  
28           *Judgment*, or the *Settlement Agreement* or the termination of the *Settlement*



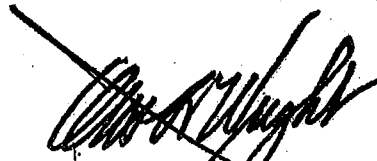
1 *Agreement*. The *District Court* shall also retain exclusive jurisdiction and rule by  
2 separate Order with respect to all applications for awards of attorneys' fees and  
3 payment of *Case Contribution Awards* to the *Named Plaintiffs*, and reimbursements of  
4 expenses, submitted pursuant to the *Settlement Agreement*.

5 11. In the event that the *Settlement Agreement* is terminated in accordance  
6 with its terms, this *Final Judgment* shall be rendered null and void, *ab initio*, and shall  
7 be vacated *nunc pro tunc*, and this *Action* shall for all purposes with respect to the  
8 *Parties* revert to its status as of the day immediately before the *Agreement Execution*  
9 *Date*. The *Parties* shall be afforded a reasonable opportunity to negotiate a new case  
10 management schedule.

11 12. The *District Court* recognizes that *Defendants* have denied and continue  
12 to deny the claims of the *Named Plaintiffs* and the *Settlement Class*. Neither the  
13 *Settlement Agreement*, this Order and *Final Judgment*, any act performed or document  
14 executed in furtherance of the *Settlement*, nor the fact of the *Settlement* shall be used  
15 be used or construed as an admission, concession, or declaration of the *Defendants*, or  
16 any other person, of any finding of fiduciary status, fault, omission, mistake, or  
17 liability, nor shall be offered as evidence of any liability in this *Action* or any other  
18 proceeding.

19 IT IS SO ORDERED.

20  
21 DATED: 5/21, 2012



OTIS D. WRIGHT

HON. OTIS D. WRIGHT, II  
UNITED STATES DISTRICT JUDGE

22  
23  
24  
25  
26  
27  
28