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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK MORRISON,)	
)	
Plaintiff(s),)	No. C08-1945 EMC (BZ)
)	
)	
v.)	ORDER RESOLVING
)	SETTLEMENT TERMS
)	
ULI ZANGPO,)	
)	
Defendant(s).)	
_____)	

On December 16, 2008, I presided over a settlement conference in this matter. A settlement was reached and placed on the record. As part of the settlement, the parties agreed that if they could not agree on the terms of the settlement documents, I could resolve their disagreement. The parties agreed that each side would submit proposed language and I could choose which proposal best effectuated the terms of the settlement.

On February 24, 2009, Mr. Bloomfield, counsel for defendant and cross-complainant, filed a letter with extensive attachments explaining that disputes had arisen, providing proposed

1 settlement documents and elaborating on the nature of each of
2 the nine disputes. On February 25, 2009, Mr. Morrison filed a
3 letter setting forth his position. Mr. Bloomfield filed a reply
4 dated March 2, 2009.

5 Having reviewed the submitted documents and having listened
6 to the record of the settlement, **IT IS HEREBY ORDERED** that the
7 settlement shall be consummated as follows:

8 1. **Form of Note and Deed of Trust**: The essential terms of
9 the Note are that it would be for \$300,000, have a one year term
10 beginning January 1, 2009, bear interest at 6%, have no
11 prepayment penalty and would be secured by a Deed of Trust. The
12 Zangpo proposal, Exhibit D-1, contains those terms. As the
13 settlement was being placed on the record, the Court gave the
14 parties ample opportunity to propose additional terms, reminding
15 them that it was important to get all the essential terms on the
16 record. The terms Mr. Morrison is proposing were not placed on
17 the record and the Court does not deem them to be essential
18 terms. The fact that certain terms were part of the underlying
19 transaction does that not mean that they are necessary to
20 effectuate the purposes which the Note serves.

21 2. **Jennifer Baker**: Ms. Baker is not a party to this
22 lawsuit, did not participate in the settlement and need not sign
23 the Note. However, one of the terms of settlement is that a
24 state court action to which Jennifer Baker is a party be
25 dismissed. The settlement was conditioned on Mr. Zangpo getting
26 Ms. Baker's consent to dismissing it. It would therefore be
27 appropriate for Ms. Baker to execute whatever release is
28 required in connection with the dismissal of the state court

1 lawsuit. However, as she was not a party to this lawsuit and
2 there was no request by Mr. Morrison that she participate in the
3 settlement of this action by executing any settlement agreement,
4 she is not required to sign the settlement agreement.

5 3. **Due On Sale**: A due on sale clause is not an essential
6 term of this settlement and was not a term to which the parties
7 agreed on the record.

8 4. **Late Fees**: Late fees is not a essential term of this
9 settlement and was not a term to which the parties agreed on the
10 record.

11 5. **Issues about Fire Insurance and Instability**: These
12 matters were not discussed during the settlement conference and
13 no agreement as to these terms was placed on the record. The
14 Court does not regard them as essential terms of the settlement.

15 6. **Disputed Right of Entry/Non-Interference**: This issue
16 was not discussed during the settlement conference and no
17 agreement as to it was placed on the record. Accordingly, Mr.
18 Morrison has whatever rights of entry or "interference" any
19 member of the public or any beneficiary of a Deed of Trust would
20 have.

21 7. **Sciaroni Issues**: The Court does not understand the
22 nature of the dispute over the so-called Sciaroni issues. The
23 Court understands that Mr. Sciaroni has given the requisite
24 approvals to allow this settlement to proceed.

25 The Court believes that with this guidance, the parties
26 should be able to execute an appropriate settlement agreement.

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1 If not, they may contact my secretary, Rose Maher at
2 **415-522-4093**, to schedule a telephone conference.

3 Dated: March 13, 2009



Bernard Zimmerman
United States Magistrate Judge

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