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**ATTORNEYS FOR THE FPGI CREDITOR TRUST
AND FIRSTPLUS FINANCIAL, INC.**

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
FIRSTPLUS FINANCIAL, INC.,	§	Case No. 99-31869-HCA-11
	§	(Chapter 11)
Debtor.	§	Hearing: To Be Set
	§	

**MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019 TO COMPROMISE CONTROVERSY REGARDING
DISPUTES CONCERNING: (1) FIRSTPLUS BANK; (2) THE PLAN
INJUNCTION MOTION; AND (3) LIQUIDATION AND PAYMENT OF
U.S. BANK'S CLAIM UNDER ARTICLE 6.13 OF PLAN OF REORGANIZATION**

The FPGI Creditor Trust (the "Trust") and FirstPlus Financial, Inc., the reorganized Debtor (collectively with the Trust, the "Movants"), files this its Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 to Compromise Controversy Regarding Disputes Concerning: (1) FirstPlus Bank, (2) the Plan Injunction Motion and (3) Liquidation of U.S. Bank's Claim Under Article 6.13 of Plan of Reorganization (the "Motion"), and shows:

**MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY
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DISPUTES CONCERNING: (1) FIRSTPLUS BANK; (2) THE PLAN
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I. JURISDICTION

1. This Court has jurisdiction concerning this Motion under 28 U.S.C. §§ 157(b)(1) and 1334. The subject matter of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

II. PRELIMINARY STATEMENT

2. This Motion seeks approval of a settlement that will resolve the Trust's interest in FirstPlus Bank so as to permit a distribution to unsecured creditors in this case. To do so, the settlement also resolves the claims of various consumer borrowers and assignee defendants against FirstPlus Bank so as to permit the liquidation of FirstPlus Bank. In addition, the settlement will liquidate and finally settle U.S. Bank's claim under Article 6.13 of the Plan for indemnification and/or breach of contract on account of the consumer borrower lawsuits described herein. As part of the settlement, the Trust and FirstPlus Financial, Inc. will withdraw their pending motion to have the Bankruptcy Court declare that various consumer borrower lawsuits brought against certain assignee defendants are enjoined under the Plan.

3. Concurrently herewith, the Trust has filed an *Ex Parte* Motion to Approve Notice Procedures and Set Hearing on this Motion.

II. BACKGROUND FACTS

A. The Trust's Ownership of FirstPlus Bank

4. On March 5, 1999, FirstPlus Financial, Inc. (the "Debtor") and FirstPlus Special Funding Corp. ("Special Funding") filed voluntary petitions commencing Chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division

(the "Bankruptcy Court"), Bankruptcy Case Nos. 99-31869-HCA-11 and 99-31870-HCA-11, respectively (each a "Bankruptcy Case" and collectively, the "Bankruptcy Cases").

5. On or about April 10, 2000, the Bankruptcy Court entered its Order Confirming the Modified Third Amended Plan of Reorganization of FirstPlus Financial, Inc. Dated April 7, 2000 (the "Plan"). The Bankruptcy Court appointed David T. Obergfell Trustee of the Trust (the "Trustee") by order entered April 10, 2000.

6. Pursuant to the terms of the Plan, a separate non-debtor subsidiary of the common parent of the Debtor and the FirstPlus Bank (the "Bank") transferred all of the common stock of Bank (the "FPB Stock") to the Trust and the Trust became the sole shareholder of the common stock of the Bank. The Bank is a California industrial bank, licensed and regulated by the California Department of Financial Institutions. The Trust was charged under the Plan with liquidating its interest in the FPB Stock and distributing those proceeds to creditors in accordance with the Plan.

B. Class Action Litigation

Description of Litigation.

7. Since the entry of the Confirmation Order on April 10, 2000, and the Effective Date of the Plan (May 10, 2000), numerous consumer borrowers, by and through counsel, have initiated class action proceedings against, among others, the Bank, certain Securitization Trust Defendants¹, Sovereign and U. S. Bank (collectively, the "Class Action Litigation")

¹ FirstPlus Home Loan Owner Trust No. 1997-2; FirstPlus Home Loan Owner Trust No. 1997-3; FirstPlus Home Loan Owner Trust No. 1997-4; FirstPlus Home Loan Owner Trust No. 1998-1; FirstPlus Home Loan Owner Trust No. 1998-2; FirstPlus Home Loan Owner Trust No. 1998-3; FirstPlus Home Loan Owner Trust No. 1998-4; FirstPlus Home Loan Trust 1996-2; FirstPlus Home Loan Owner Trust 1996-3; FirstPlus Home Loan Owner Trust 1996-4; FirstPlus Home Loan Owner Trust 1997-1

8. The gravaman of the complaints in the Class Action Litigation is that consumer borrowers' high loan-to-value loans ("HLTV Loans") made by the Debtor, the Bank and others violated state and/or Federal consumer protection laws arising from the terms of such loans (interest fees, points and other cost) charged when such loans were originated.

The Bank and the Litigation.

9. Among other things, the Bank was an originator of HLTV Loans. From time to time the Bank sold to HLTV Loans to the Debtor. Any HLTV Loans sold by the Bank to the Debtor were subsequently sold by the Debtor to third parties. On account of same, the Bank is named as a defendant in certain cases that comprise the Class Action Litigation.

10. In certain instances where the Bank was not a named defendant in a particular Class Action Litigation, some assignees of the Bank's HLTV Loans, who are defendants, have crossed-claimed against the Bank.

11. As a result of the Bank's undetermined liability in the Class Action Litigation, the Trust was unable to liquidate the FPB Stock as mandated under the Plan. Moreover, the potential liability from the claims asserted in the Class Action Litigation far exceeded the Bank's assets, and thus, substantially impaired the value of such assets even if the Bank's defense of the actions was successful.

12. In an effort to preserve the Bank's assets for the benefit of all potential claimants, on October 31, 2001, the Bank commenced a Liquidation Proceeding before the District Court in Orange County, California (the "Liquidation Court") pursuant to California Corporation Code Section 1904. The Liquidation Court set a Bar Date in the Liquidation Proceeding by which all claims against the Bank must be filed.

13. As a result of the Bank's liquidation proceeding and court-ordered bar date, certain consumer borrowers filed claims or other pleadings in the liquidation proceeding. Similarly, assignees of the Bank's HLTV Loans have filed claims for indemnification and/or contribution in the liquidation proceeding. All of these claims remain unliquidated as to validity or amount.

14. The Bank has asserted that the class action litigation and cross-claims should be stayed in favor of the liquidation proceeding, while the plaintiffs have opposed same.

15. As the shareholder of the Bank, the Trust cannot receive the net value of the Bank until the claims of the consumer borrowers and the assignee defendants are liquidated, and if allowed in a dollar amount, paid. There is a probability that the cost of litigation plus the ultimate liability of the Bank could reduce the value of the FPB Stock to zero.

The Trust and the Litigation.

16. In response to the Class Action Litigation, the Trust filed a Motion: (1) to Enforce Plan Injunction; and (2) for Sanction for Violation of the Plan Injunction (the "Trust Motion"). The original of the Trust Motion was filed February 25, 2002 and was subsequently amended on March 13, 2002. The Trust has maintained the Class Action Litigation adversely impacts its interest in certain Residual Assets arising from interest in the Securitization Trust Defendants, and could create indemnity and warranty to liability to U.S. Bank (as described below) and Sovereign Bank (as an unsecured claim).

17. On April 29, 2002, the Court denied the Trust Motion without prejudice to its refiling. Thereafter, on October 4, 2003 the Trust, joined by FirstPlus Financial, Inc., the reorganized Debtor, filed a second amended Trust Motion.

18. Currently, certain consumer borrowers have filed a Motion for Summary Judgment requesting the Court again deny the Trust Motion, as amended, on legal grounds relating to issues of constitutional process. Also pending in connection with the Trust Motion is voluminous discovery by the consumer borrowers to the Trust.

C. U.S. Bank.

19. Pursuant to Article 6.13, the Trustee assumed the Debtor's post-petition liabilities to U.S. Bank National Association N.D. ("U.S. Bank") for certain post-petition indemnification and/or warranty obligations regarding HLTV Loans sold by the Debtor to U.S. Bank during the Bankruptcy Case. These obligations are more particularly defined in the Plan as the U.S. Bank Obligation. Pursuant to the Plan, the U.S. Bank Obligation is a contingent, unliquidated claim in favor of U.S. Bank. When liquidated by the Court, the Plan obligates the Trust to pay U.S. Bank directly in cash from specific assets.

20. As a result of the Class Action Litigation, U.S. Bank has asserted a right to indemnification under the Plan. While unliquidated at this time, the Trust estimates this claim could exceed \$10,000,000.00.

21. The Movants and U.S. Bank have agreed the filing of this Motion satisfies the requirements of Article 6.13 for U.S. Bank to file a motion with the Court for allowance of said claim.

D. Summary of Disputes Being Settled.

22. Thus, among the pending disputes between the Trust, the Debtor, the Bank consumer borrower plaintiffs, and assignee defendants are: (1) the Trust Motion; (2) the rights of the Liquidation Court to enjoin or proscribe the continuation of some of the Class Action

Litigation; (3) consumer borrowers' claims in the liquidation proceeding;(4) the necessity of certain courts to abstain from hearing the claims in the Class Action Litigation in light of the liquidation proceeding; (5) the assignee defendants claims and rights in the liquidation proceeding; (6) U.S. Bank's claims and rights against the Trustee under the Plan as a result of the claim asserted in the Class Action Litigation; and (7) the ultimate distribution of the assets of the Bank in the liquidation proceeding.

E. Settlement Negotiations.

23. Since May of 2002, the Trust has engaged in settlement discussions with various parties as to liquidation of the Bank and a larger global settlement of the Class Action Litigation. On April 1, 2 and 3, 2003, certain parties attended mediation sessions in this regard. As a result of the mediation, a settlement as to liquidation of the Bank was reached.

III. PROPOSED SETTLEMENT TERMS

24. The Movants propose to enter into a settlement agreement substantially in the form attached hereto as Exhibit A (the "Agreement"). The Agreement's terms are outlined below.

25. The Trust will receive, in exchange of all its interest in FirstPlus Bank, all of FirstPlus Bank's existing loan portfolio, and proceeds therefrom (less net accrued interest pending necessary court approvals), as of February 28, 2003. This loan portfolio had a net book value of approximately \$6.6 million.

26. Certain consumer borrowers in Washington and Virginia will receive a claim in an amount no less than \$1,000,000.00 and no greater than \$5,000,000.00 (the "Settlement Fund"), to be fix-based on the outcome of ruling on rate exportation in a pending class action

matter in Illinois. The Assignee Defendants will receive the remaining value of the Bank, estimated to be approximately \$8.4 million, after costs of the Bank's liquidation are paid, plus any amounts of the Settlement Fund not distributed to consumer borrowers.

27. The Trust will agree to fund an administrative reserve of \$1 million from its proceeds of the settlement proceeds it receives to pay for its cost of continuing to maintain the books and records of the Debtor and the Bank regarding the consumer borrowers loans. Any remaining amounts in this fund, if any, will be paid to U.S. Bank as discussed below. The Trust will also be reimbursed by consumer borrowers' respective counsel for any third party cost related to future discovery served upon the Trust or FirstPlus Financial in regards to the continuing class action litigation.

28. The remaining proceeds of the loan pool, which the Trust estimates will be \$4-\$5 million after the loan pool is liquidated, will be disbursed as WIB Note Proceeds under the Plan. Notwithstanding U.S. Bank's potential claims to these funds under the Plan, pursuant to the settlement agreement these funds will be distributed to general unsecured creditors. The Trust estimates that as a result of the settlement unsecured creditors will receive between 3.5 and 5.0 cents on each dollar of allowed claims.

29. The Securitization Trust Defendants, of which the Debtor is a residual holder, will share as an assignee defendant a portion of the FirstPlus Bank proceeds paid to the assignee defendants.

30. The Trust will withdraw the Trust Motion and the Court's order denying the Trust Motion will become a final order.

31. The Class Action Litigation, except as relates to the Bank, will continue to be litigated in the jurisdictions that it is now pending.

32. U.S. Bank's claim pursuant to Article 6.13 of the Plan will be fixed at \$10,000,000 and will be payable from Cash Flow Instrument proceeds.

IV. CONTINGENCIES TO SETTLEMENT

33. In addition to approval of the Agreement by this Court, the Agreement is contingent upon obtaining approval and/or dismissals from the Liquidation Court and certain courts hearing particular cases that are part of the Class Action Litigation.

34. The Securitization Trust Defendants, pursuant to their governing instruments, must give notice of the settlement to beneficial interest holders and provide an opportunity for such parties to object.

35. The Assignee Defendants must receive at least \$8,400,000.00 from FP Bank, exclusive of any amounts from the Settlement Fund.

IV. RELIEF REQUESTED

36. Pursuant to Federal Rule of Bankruptcy Procedure 9019, the Movants requests that the Court approve the proposed settlement.

37. The Court has the discretionary authority to approve a compromise of a controversy pursuant to Rule 9019(a). *See Protective Comm. of Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968), *on remand*, *TMT Trailer Ferry, Inc. v. Kirkland*, 471 F.2d 10 (5th Cir. 1972); *Continental Airlines, Inc. v. Air Line Pilots' Ass'n Int'l, (In re Continental Airlines, Inc.)*, 907 F.2d 1500, 1508 (5th Cir. 1990). A trustee or debtor may compromise claims in the administration of the estate with the approval of the court, after notice

and hearing. *See* Fed. R. Bankr. P. 9019(a). Whether to approve a compromise is a matter within the sound discretion of the bankruptcy court. *See In re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984); *American Employers Ins. Co. v. King Resources Co.*, 556 F.2d 471 (10th Cir. 1977).

38. Courts should consider the following factors in determining whether to approve a proposed settlement:

- (a) the probability of success in litigation;
- (b) the likely difficulties in collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (d) the paramount interest of the creditors.

See Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996); *see also Protective Committee*, 390 U.S. at 424-25; *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1994); *Jones v. Cage (In re W. J. Services, Inc.)*, 140 B.R. 190, 191 (S.D. Tex. 1991). This standard seeks to balance the risks and benefits associated with pursuing a potential claim against the costs associated with the proposed settlement.

39. As is demonstrated below, the proposed settlement should be approved under Federal Rule of Bankruptcy Procedure 9019.

40. First, probability of success in continued litigation of the Trust Motion and in the Liquidation Proceeding for the Movants is uncertain. The issues raised by the Trust Motion and the Liquidation Proceeding are highly complex. The Trust failed to prevail on its initial attempt to have the Court enjoin the Class Action Litigation. Borrower Claimants have filed a Motion

for Summary Judgment in the pending Trust Motion proceeding raising issues of constitutional due process as to the enforceability of the Plan Injunction by the Movants.

41. The Bank's Liquidation Proceeding is a *sui generis* legal proceeding. There is scant statutory or case law to guide the parties as to how to proceed as to issues of claim liquidation, and claim estimation, particularly in light of pending litigation over similar issues in numerous other jurisdictions, some of which have abstained in favor of the liquidation proceeding and others which have not. As the equity holder, the Trust's ability to realize a distribution in the Liquidation Proceeding, absent this settlement, must be viewed as speculative.

42. While the Movants believe they may prevail on the Trust Motion, such a victory would undoubtedly be appealed. Given the potential dollars at stake to the borrower claimants and their counsel, the Movants believe consumer borrower's counsel would appeal any favorable ruling in the highest court. Meanwhile, the ability of the Trust to fulfill its mission to make a distribution to unsecured creditors in this case could be hopelessly bogged down by such litigation.

43. As it relates to the settlement with U.S. Bank, absent the compromise as proposed, the Trustee would still have to face: (1) the issue of liquidating their claim, which the Trust is advised exceeds the proposed settlement amount; and (2) the fact that any recovery from the Liquidation Proceeding might well go to U.S. Bank, and not unsecured creditors, pursuant to Article 6.13 of the Plan.

44. Obviously with so many issues in play, the Movants will expend a deal of money in attorneys' fees, trustee fees and court costs in connection with the Trust Motion, the Liquidation Proceeding, and in connection with the U.S. Bank claim.

45. Difficulty of collection by the Trustee in the Liquidation Proceeding is a factor that clearly favors settlement of these matters.

46. The proposed settlement has been negotiated at arms length among at least seven different constituencies over the course of nearly one year.

47. The proposed settlement reaches a fair result while avoiding substantial future legal cost.

48. Given the foregoing, the Movants submit that the best interests of creditors are served by the proposed settlement. Accordingly, this Court should grant the Motion, and approve the proposed settlement.

WHEREFORE, the Movants request that the Court grant the Motion thus approving the proposed settlement, and authorizing the Movants take such actions as are necessary to complete the settlement. The Movants also prays for such other and further relief as this Court deems just and proper.

Respectfully submitted this 13th day of August, 2003.

KANE, RUSSELL, COLEMAN & LOGAN, P.C.

By: /s/ Joseph A. Friedman

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 to Compromise Controversy Regarding Disputes Concerning: (1) FirstPlus Bank; (2) the Plan Injunction Motion; and (3) Liquidation of U.S. Bank's Claim Under Article 6.13 of Plan of Reorganization has been served upon the attached Service List dated May 2, 2003, by First Class United States Mail, postage pre-paid, on this 13th day of August, 2003.

/s/ Joseph A. Friedman _____
Joseph A. Friedman