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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

ARMANDO PLASCENCIA and MELANIA
 PLASCENCIA, individually and on behalf of
 all others similarly situated,

Plaintiffs,

v.

LENDING 1ST MORTGAGE, LENDING 1ST
 MORTGAGE LLC, EMC MORTGAGE
 CORPORATION, and DOES 1 through 10
 inclusive,

Defendants.

Case No. 4:07-cv-04485-CW

CLASS ACTION

**~~AMENDED [PROPOSED]~~ ORDER
 GRANTING JOINT MOTION FOR
 PRELIMINARY APPROVAL OF PARTIAL
 CLASS ACTION SETTLEMENT**

Courtroom:	2 – 4 th Floor
Judge:	Hon. Claudia Wilken
Complaint Filed:	August 29, 2007
Trial Date:	November 5, 2012

1 originated or otherwise approved by Defendant LENDING 1st MORTGAGE within the
2 State of California.

3 That Order appointed Plaintiffs Armando Plascencia and Melania Plascencia as the Class
4 Representatives and the law firms of Smoger & Associates, Arbogast & Berns LLP,¹ Seeger Weiss
5 LLP, and Williams Cuker Berezofsky as Class Counsel. On November 29, 2010, an order was entered
6 appointing J. Mark Moore of Spiro Moss LLP² as an additional class counsel. (Doc. 246.)
7

8 3. Thereafter, after extensive arms' length negotiations, the Class Representatives and
9 Lending 1st (collectively referred to as the "Parties") entered into an *Agreement and Stipulation of*
10 *Partial Settlement of Class Action* (the "Settlement Agreement") memorializing the terms of the
11 agreement between the Parties and subsequently filed the Settlement Agreement with the Court.³
12

13 4. On September 10, 2012, the Parties filed the Motion.

14 5. Epiq Class Action and Claims Solutions, Inc. (the "Settlement Administrator") is
15 qualified to serve as the Settlement Administrator under the Settlement Agreement.

16 6. The terms of the Settlement Agreement appear to be within the range of possible
17 approval as fair, reasonable, adequate and proper, cost-effective, and have been negotiated at arms'
18 length.

19 7. The Court has considered the opposition filed by EMC and, regardless of whether it has
20 standing to object, finds that its objections do not merit denial of this motion. The topics of the
21

22
23 ¹ On November 1, 2011, Notices of Firm and Address Change and of Change of Firm Name were filed
24 documenting the change of class counsel from "Arbogast & Berns LLP" to "Arbogast Bowen LLP" and
"Berns Weiss LLP." (Documents 282, 283, and 284.)

25 ² On April 10, 2012, a Notice of Change of Firm Name was filed documenting the change of class
26 counsel's name from "Spiro Moss LLP" to "Spiro Moore LLP." (Doc. 335.)

27 ³ Defendant EMC Mortgage Corporation is not a party to this Settlement Agreement and remains a
28 defendant in the Action. The Settlement Agreement is not intended to, and does not, release any claims
against EMC.

1 declaration to be provided by Lending 1st to Plaintiffs do not appear necessarily to contradict the
2 testimony given by Lending 1st's witness, Mr. Lombardi, previously. Further, if Plaintiffs were to
3 offer the declaration as evidence at a later date, EMC will have an opportunity to oppose the proffer,
4 and if Plaintiffs were to call Mr. Lombardi as a witness, EMC will have an opportunity to cross-
5 examine him. In addition, to the extent that EMC argues that the Parties did not provide the Court
6 with a copy of Lending 1st's insurance policy in order to assess the fairness of the proposed settlement
7 amount, the Parties have since offered this into evidence. In light of Lending 1st's limited financial
8 resources, the settlement amount is within the range of possible approval as fair and reasonable.

9
10 8. Therefore, the Settlement Agreement is preliminarily approved by the Court, pursuant
11 to Rule 23(e) of the Federal Rules of Civil Procedure.

12
13 9. Notice should be given to all the Class members, affording them the opportunity to
14 object to the proposed Settlement Agreement.

15 10. The contents of the *Notice of Proposed Settlement and Final Approval Hearing*
16 attached hereto (the "Settlement Notice") meet the requirements of Federal Rule of Civil Procedure
17 23(c)(2)(B). The Settlement Notice (i) states the nature of the action and the issues and defenses;
18 (ii) makes clear that the Settlement Agreement, if approved, will be binding on all Class members;
19 (iii) summarizes the terms of the Settlement Agreement and the right of Class members to object to the
20 Settlement Agreement and to appear by counsel at the hearing on final approval of the Settlement
21 Agreement; and (iv) provides that more information is available from the Settlement Administrator
22 upon request and is available on the Settlement Website. Further, the Settlement Notice informs the
23 Class members that the Settlement Agreement provides for the release of their Claims (as that term is
24 defined in the Settlement Agreement).

25
26 11. Notice to all Class members by bulk or standard United States mail, postage prepaid, at
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1 the collateral property address for the primary borrower on the subject loan as listed in Lending 1st's
2 books and records, complies with due process standards, Federal Rule of Civil Procedure 23, and is
3 reasonable and is the best notice practicable under the circumstances.

4
5 12. The hearing on the final approval of the Settlement Agreement (the "Final Approval
6 Hearing") should be held no earlier than 135 days after the entry of this Order so that Class members
7 have sufficient time from the mailing of the Settlement Notice to secure further information regarding
8 the relief sought in the Motion, or to object to the Settlement Agreement should they choose to do so,
9 and to engage counsel to appear at the Final Approval Hearing.

10 13. The potential recipient of any unclaimed funds, The National Consumer Law Center
11 ("NCLC"), appears to bear a substantial nexus to the mortgage disclosure claims at issue in this
12 litigation and to benefit a group that is not too remote from the class members, whose property is
13 located in the United States. See Dennis v. Kellogg Co., 697 F.3d 858, 865 (9th Cir. 2012).
14 According to materials provided by NCLC, it is a national organization that has existed to protect the
15 rights of consumers for over 40 years, is dedicated to promoting fairness and justice in the marketplace
16 and assists financially distressed consumers in a number of ways, including by educating consumers,
17 training attorneys and advocates, and providing technical assistance and case consultation services to
18 lawyers representing these individuals. Further, NCLC is recognized nationally as a preeminent expert
19 in consumer credit law and policy and has provided expertise in connection with significant legislation
20 concerning consumer rights in mortgage lending and credit transactions, including the Dodd-Frank
21 Wall Street Reform and Consumer Protection Act, the Military Lending Act of 2006, the Home
22 Ownership and Equity Protection Act of 1994, the Truth in Lending Act Amendments of 1995 and the
23 Fair Debt Collection Practices Act.
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26 14. Other good and sufficient cause exists for granting the relief requested in the Motion.
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1 shall also ensure that a copy of their Joint Motion for Final Approval of the Settlement, including any
2 request for an incentive award to the Class Representatives, is placed on the website by the same date
3 that it is filed with the Court.

4 F. Final Approval of the Settlement Agreement:

5 i. The Court shall conduct a Final Approval Hearing to determine the final
6 approval of the Settlement Agreement on May 2, 2013 at 2:00 p.m. The purposes of the Final
7 Approval Hearing are to determine (1) whether the proposed Settlement Agreement on the terms and
8 conditions provided in the Settlement Agreement is fair to the proposed Class, reasonable and
9 adequate; (2) whether the Released Claims (as defined in the Settlement Agreement) should be
10 released and Lending 1st should be dismissed; and (3) whether the application for an incentive award
11 to the Class Representatives for their role in bringing and participating in this litigation should be
12 approved and, if so, in what amounts. The Court may adjourn or continue the Final Approval Hearing,
13 and may continue interim deadlines provided herein, without further direct notice to the Class.
14 However, if the Final Approval Hearing or any other interim deadline is changed, Class Counsel shall
15 ensure that Notice thereof is placed onto the Settlement Website. The Class Notice shall direct any
16 Class member who intends to appear at the Final Approval Hearing that they may visit the website or
17 contact Class Counsel prior to the hearing to ensure that the hearing has not been adjourned or
18 continued.
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20 ii. The procedures for notifying Class members of their rights to object to the
21 Settlement Agreement and the procedures for objecting to the proposed Settlement Agreement are
22 approved. All written objections must be filed with the Clerk of the Court and served on the entities
23 identified in the Settlement Notice, via first class United States mail postmarked no later than sixty
24 (60) days after the date of the Settlement Notice, regardless of the address to which the Settlement
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1 Notice was originally mailed.

2 iii. The written Objection must contain: (a) a statement of the Class member's
3 objection, including the specific grounds for the objection and any other reasons why such Class
4 member desires to be heard; (b) any legal support the Class member wishes to bring to the Court's
5 attention; and (c) any evidence, documents or writing that such Class member wishes to introduce in
6 support of the written Objection.
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8 iv. The Parties' Joint Motion for Final Approval of the Settlement, including any
9 request for an incentive award to the Class Representatives, must be filed with the Court by the earlier
10 of the following dates: (1) fourteen (14) calendar days before the Objection deadline; or (2) thirty-five
11 (35) calendar days before the Final Approval Hearing.
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13 v. The Parties' Reply Memorandum addressing any Objections must be filed with
14 the Court at least fourteen (14) calendar days before the Final Approval Hearing.

15 vi. All Class members, except for those who had previously filed a timely written
16 Request for Exclusion in accordance with the Notice of Pendency of Class Action to exclude
17 themselves from the Class, shall be bound by all orders, determinations, and judgments in the Action
18 concerning the proposed Settlement Agreement.
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20 G. In the event that the Court does not enter the final order (the "Final Approval Order")
21 approving the Settlement Agreement, if the Final Order Date does not occur, or if the proposed
22 Settlement Agreement is terminated for any reason whatsoever, then the Settlement Agreement shall
23 become null and void; the Action as to Lending 1st may continue (with litigation to recommence as
24 provided for therein); and any and all orders entered pursuant to the Settlement Agreement shall be
25 deemed vacated; and the parties may not make any references to or use of the Settlement Agreement,
26 any orders, or any other documents related thereto.
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1 H. In aid of the Court's jurisdiction to implement and enforce the Settlement Agreement,
2 the Class Representatives and all Class members shall be preliminarily enjoined and barred from
3 commencing or prosecuting any claim against the Released Parties or action inconsistent with the
4 Released Claims (as defined in the Settlement Agreement), whether directly, representatively,
5 derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in
6 any local, state or federal court, or in any agency or other authority or forum wherever located.
7 Nothing in this paragraph, however, shall be construed to prevent a Class member from presenting
8 objections to the Court regarding the Settlement Agreement in accordance with this Order.
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10 I. The Court retains jurisdiction to construe, interpret, enforce, and implement the terms
11 of the Settlement Agreement and this Order. Any dispute regarding the Settlement Agreement will be
12 presented to and resolved by the Court.
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14 J. Neither this Order, the Settlement Agreement, nor any of its terms or provisions, nor
15 any of the negotiations between the Parties or their counsel (nor any actions taken to carry out this
16 Order), is, may be construed as, or may be used as an admission or concession by any or against any of
17 the Parties or the Released Parties of any wrongdoing, the validity of any claim or liability, any alleged
18 violation or failure to comply with any law, any alleged breach of contract, or any legal or factual
19 argument, contention or assertion, and the Parties deny any wrongdoing or liability on their part. The
20 execution and implementation of the Settlement Agreement or its terms shall not be, in any event,
21 construed as, or deemed evidence of, an admission or concession as to Lending 1st's denials, defenses,
22 or factual or legal positions, nor shall be offered or received in evidence in any action or proceeding
23 against any party in court, administrative agency or other tribunal for any purpose whatsoever, except
24 as may be necessary in a proceeding to enforce the terms of this Order and the Settlement Agreement;
25 provided, however, that this Order and the Settlement Agreement may be filed in any action against
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1 Lending 1st or the Released Parties to support a defense of res judicata, collateral estoppel, release,
2 waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of
3 claims preclusion, issue preclusion or similar defense or counterclaim.
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5 IT IS SO ORDERED.

6 Dated: December 28, 2012

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8 HON. CLAUDIA WILKEN
9 UNITED STATES DISTRICT JUDGE
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