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Attorneys for Plaintiffs and the Class

**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**ORDER GRANTING JOINT MOTION FOR  
 FINAL APPROVAL OF PARTIAL CLASS  
 ACTION SETTLEMENT AND FINAL  
 JUDGMENT**

Date: May 2, 2013  
 Time: 2:00 p.m.  
 Location: Courtroom 2-4<sup>th</sup> Floor  
 Judge: Hon. Claudia Wilken

Complaint Filed: August 29, 2007  
 Trial Date: Vacated



1 **ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

2 1. This order (“Final Approval Order”) incorporates and makes a part hereof:

3 (a). the Settlement Agreement filed with this Court on September 10, 2012;

4 (b). the Notice of Proposed Settlement and Final Approval Hearing (“Settlement  
5 Notice”), approved by the Court on December 28, 2012; and

6 (c). the Preliminary Approval Order.

7 2. The Court has jurisdiction over the subject matter of the Class Claim, the Class Action,  
8 the Settlement Agreement, the Class Representatives, and Lending 1st. The Court also has jurisdiction  
9 over the Class members because adequate notice has been provided and all Class members have been  
10 given notice and the opportunity to object to the Settlement Agreement.

11 3. Based on the evidence submitted pursuant to the terms of the Settlement Agreement  
12 and the Preliminary Approval Order, the Court finds that the distribution of the Settlement Notice fully  
13 complied with the applicable provisions of the Settlement Agreement, Rule 23 of the Federal Rules of  
14 Civil Procedure and due process, and constituted the best notice practicable under the circumstances,  
15 and provided due and sufficient notice to all persons entitled to notice of the Settlement Agreement of  
16 the Class Action and Class Claim as against Lending 1st. The Court finds further that Lending 1st has  
17 satisfied the requirements of notice to pertinent government agencies as set forth in the Class Actions  
18 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715.

19 4. The Court finds that, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the  
20 Settlement Agreement is approved as presented and without modification (except insofar as the Parties  
21 have agreed to such modification), and the terms of the Settlement as set forth in the Settlement  
22 Agreement are approved as fair, reasonable, adequate and in the best interests of the Class members,  
23 and the Parties are authorized to implement its terms.

24 5. Each Class member who had not effectively excluded himself or herself previously  
25 from the Class shall be bound by the Settlement Agreement, including the releases set forth therein.  
26 Effective upon the Final Order Date, Class members will be deemed to have released their claims (the  
27 “Released Claims”) as follows:

1 (a). For good and valuable consideration, the receipt and sufficiency of which are  
2 hereby acknowledged, the Class Representatives and Class members, their respective co-  
3 borrowers, spouses, or former spouses, who may have or have had an interest in the loan that is  
4 the subject of this Settlement Agreement, and the present, former and future respective heirs,  
5 executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-  
6 in-interest, assigns, employees, and insurers of the Class Representatives and the Class  
7 members (collectively, the "Releasing Parties"), hereby remise, release, and forever discharge  
8 Lending 1st, and each of its present, former, and future direct and indirect parent companies,  
9 including but not limited to its shareholders, directors, officers, insurers, affiliates, subsidiaries,  
10 divisions, officers, employees, agents, attorneys, directors, shareholders, assignors, and  
11 predecessors-in-interest (but excluding any assignees or purchasers of loans to Class members)  
12 (collectively the "Released Parties") from any and all duties, obligations, claims,  
13 counterclaims, judgments, demands, lawsuits, actions, causes of action or liabilities, relating to  
14 the failure to disclose that the subject loans guaranteed negative amortization. This release  
15 shall apply whether arising under local, state, or federal law, whether by statute, contract,  
16 common law, or equity. The foregoing Release shall also apply to any and all claims of the  
17 Releasing Parties that would be barred by the doctrines of res judicata and collateral estoppel  
18 had the issues in this case been litigated by each Class member to a final judgment on the  
19 merits, and to any and all past, present, and future claims, administrative or otherwise, actions,  
20 causes of action, rights, or liabilities, known or unknown, based on or arising from the  
21 allegations that are contained in the Complaint, or that could have been asserted in the  
22 Complaint, against any of the Released Parties, provided, however, that nothing in this  
23 Settlement Agreement shall limit or curtail any Class member's rights with respect to any  
24 claims that he or she may have against any assignee or purchaser of Class member's loans that  
25 is not a Released Party.

26 (b). Without limiting the foregoing, the Released Claims specifically extend to and  
27 include any claims relating to the origination of the loans that the Class Representatives, Class  
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1 members, and the Releasing Parties do not know, or suspect to exist in their favor at the time  
2 that the Settlement Agreement is executed, or at the time that the Settlement Agreement and  
3 the Releases contained therein become effective (i.e., the Final Order Date), which, if known,  
4 might have affected their decision to enter into the Settlement Agreement. The Class  
5 Representatives, Class members, and the Releasing Parties intentionally and knowingly waive  
6 any and all provisions, rights, and benefits conferred by any law of the United States, any state  
7 or territory of the United States, or any law or principle of common law or equity that governs  
8 or limits a person's release of unknown claims. The Class Representatives, Class members,  
9 and the Releasing Parties understand and acknowledge that they may discover facts in addition  
10 to or different from those that are currently known or believed to be true with respect to the  
11 subject matter of the Released Claims but that it is their intention to fully, finally, and forever  
12 settle and release all of the Released Claims, known and unknown, suspected or unsuspected,  
13 without regard to the subsequent discovery or current existence of any such additional or  
14 different facts, and in furtherance of such intention, the release of these Released Claims shall  
15 remain in effect notwithstanding the discovery or existence of any such additional or different  
16 facts. The provisions of this paragraph include, without limitation, an express, knowing, and  
17 voluntary waiver, to the fullest extent permitted by law, by the Class Representatives and all  
18 Class members and Releasing Parties, of any and all rights or benefits conferred under Section  
19 1542 of the California Civil Code, which provides that:

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

23 The Class Representatives, Class members, and the Releasing Parties understand and  
24 acknowledge the significance of this waiver of Section 1542 of the California Civil Code. In  
25 addition, the Class Representatives and all Class members and Releasing Parties also  
26 expressly, knowingly, and voluntarily waive any and all provisions, rights, and benefits  
27 conferred by any law of the United States, any state or territory of the United States, and any  
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1 law or principle of common law or equity, which is similar, comparable, or equivalent to  
2 Section 1542 of the California Civil Code.

3 (c). Notwithstanding any of the provisions herein, no person, party or entity other  
4 than the Released Parties is receiving any release or waiver of liability under this Settlement  
5 Agreement.

6 (d). Further, it is understood and agreed by the Parties that the Class  
7 Representatives, on behalf of themselves and the Class they represent, allege and seek damages  
8 that exceed the amount of the Settlement Fund. Further, the Class Representatives and the  
9 Class contend that the Settlement Fund is substantially less than the amount sought for the  
10 alleged injuries that they claim to have suffered as a result of the alleged conduct at issue in the  
11 Complaint. However, in order to resolve the disputes between the Class Representatives and  
12 Class members on the one hand, and Lending 1st on the other hand, and in view of Lending  
13 1st's financial condition and potentially uninsured status, the Class Representatives and Class  
14 members have agreed to release the Released Parties (and the Released Parties alone) from the  
15 Released Claims in exchange for compensation for the purported injuries allegedly caused by  
16 Lending 1st.

17 6. No fees or costs shall be owing to or payable to the Class Representatives in connection  
18 with the Class Action except as provided in the Settlement Agreement.

19 7. The application for an award of an incentive payment to the Class Representatives for  
20 their role in bringing and participating in this litigation, in the amount of \$3,000.00 each is granted.  
21 The previously appointed Settlement Administrator, Epiq Class Action and Claims Solutions, Inc., is  
22 authorized to make payment of \$3,000.00 to each of the Class Representatives from the Settlement  
23 Fund in accordance with the terms of the Settlement Agreement.

24 8. The Settlement Administrator, on behalf of Lending 1st, shall pay all Class members a  
25 pro rata distribution of the Settlement Fund, after deducting from the Settlement Fund: (1) the payment  
26 to the Settlement Administrator of up to Thirty Thousand Dollars and No Cents (\$30,000.00); and (2)  
27 a payment of Three Thousand Dollars and No Cents (\$3,000.00) to each of the Class Representatives.  
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1           9.       Once the Settlement Administrator makes payments to the Class members under the  
2 terms of the Settlement Agreement, if any Class member, for whatever reason, does not receive his or  
3 her payment check, said Class member is nonetheless considered to have been paid by Lending 1st,  
4 and Lending 1st shall have no further obligation to the Class member, and said check shall not be  
5 considered to be abandoned property subject to escheatment, but shall be deemed part of the remainder  
6 subject to the terms of the Settlement Agreement, and the Settlement Agreement shall in all respects  
7 be fully enforceable against the Class member.

8           10.      Any check to a Class member that is returned to the Settlement Administrator with a  
9 forwarding address will be re-sent to the address provided and the Settlement Administrator's database  
10 will be updated with the current address information. If any check to a Class member is uncashed  
11 sixty (60) days after the date of the instrument, the Settlement Administrator shall send a reminder  
12 letter to that Class member. The total amount of all checks that are returned as undeliverable, with no  
13 forwarding address, or still uncashed ninety (90) days after the date of the issuance of the instrument  
14 shall become part of a cy pres fund to be distributed to The National Consumer Law Center.

15           11.      Nothing in this Order, nor the Settlement Agreement, nor any of its terms or provisions,  
16 nor any of the negotiations between the Parties or their counsel, nor any actions taken to carry out this  
17 Order, is or may be construed as, or may be used as an admission or concession by or against any of  
18 the Parties or the Released Parties of any wrongdoing, the validity of any claim or liability, any alleged  
19 violation or failure to comply with any law, any alleged breach of contract, or any legal or factual  
20 argument, contention or assertion, and the Parties deny any wrongdoing or liability on their part. The  
21 execution and implementation of the Settlement Agreement and its terms shall not in any event be  
22 construed as, or deemed evidence of, an admission or concession as to Lending 1st's denials, defenses,  
23 or factual or legal positions, nor shall the Settlement Agreement be offered or received in evidence in  
24 any action or proceeding against any party in any court, administrative agency or other tribunal for any  
25 purposes whatsoever, except as necessary in a proceeding to enforce the terms of this Order and the  
26 Settlement Agreement; provided, however, that this Order and the Settlement Agreement may be filed  
27 by Lending 1st or the Released Parties to support a defense of res judicata, collateral estoppel, release,  
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1 waiver, good faith settlement, judgment bar, or reduction, full faith and credit, or any other theory of  
2 claim preclusion, issue preclusion or similar defense or counterclaim.

3 12. Lending 1st is dismissed from this Action with prejudice. The Class Representatives  
4 and all Class members are permanently enjoined and barred from commencing or prosecuting any  
5 action against the Released Parties asserting any of the Released Claims, either directly,  
6 representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense,  
7 or otherwise, in any local, state or federal court, or in any agency or other authority or forum wherever  
8 located. Any person or entity that knowingly violates such injunctions shall pay the costs and  
9 attorneys' fees incurred by Lending 1st or other Released Parties as a result of the violation. Nothing  
10 in this Final Approval Order, however, shall preclude any action to enforce the terms of the Settlement  
11 Agreement.

12 13. The Settlement embodied in the Settlement Agreement is in "good faith" within the  
13 meaning of California Code of Civil Procedure Sections 877 and 877.6. All present and prospective  
14 claims with respect to Lending 1st for indemnification and contribution, however denominated,  
15 relating to the events that are the subject of this litigation, are extinguished and barred to the fullest  
16 extent permitted by law.

17 14. The Court shall retain continuing jurisdiction over the Parties to the Settlement  
18 Agreement and all Class members to determine all matters relating in any way to this Final Approval  
19 Order, the Preliminary Approval Order or the Settlement Agreement, including, without limitation, to  
20 their administration, implementation, interpretation, or enforcement.

21  
22 IT IS SO ORDERED.

23 Dated: 5/13/2013 \_\_\_\_\_

24   
25 HON. CLAUDIA WILKEN  
26 UNITED STATES DISTRICT JUDGE