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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**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 2-4th Floor
 Judge: Hon. Claudia Wilken

Complaint Filed: August 29, 2007
 Trial Date: Vacated

1 **ORDER GRANTING JOINT MOTION FOR FINAL APPROVAL OF PARTIAL CLASS**
2 **ACTION SETTLEMENT**

3 The Court has considered the Joint Motion for Final Approval of Partial Class Action
4 Settlement (the “Motion”) filed by Class Representatives Armando Plascencia and Melania Plascencia
5 (the “Class Representatives”), on behalf of themselves and all others similarly situated, and
6 Defendants Lending 1st Mortgage and Lending 1st Mortgage LLC (collectively “Lending 1st”) (the
7 Class Representatives and Lending 1st collectively as the “Parties”). In connection with the Motion,
8 the Court finds that:

9 A. The Court entered its Order Granting Joint Motion for Preliminary Approval of Partial
10 Class Action Settlement on December 28, 2012 (Doc. 429) (the “Preliminary Approval Order”),
11 granting preliminary approval of the Agreement and Stipulation of Partial Settlement of Class Action
12 between the Class Representatives and Lending 1st dated September 7, 2012, (the “Settlement
13 Agreement”) and approving the form and manner of notice of the Settlement Agreement and the
14 deadline for filing objections for all Class members.

15 B. Due notice has been given to the Class of the terms of the proposed Settlement
16 Agreement, the time, date and location of the final hearing to consider approval of the Settlement
17 Agreement (the “Final Approval Hearing”), the right to object to the proposed Settlement Agreement
18 and the right to appear in person or by counsel at the Final Approval Hearing; and no other and further
19 notice is required, and such notice is deemed proper and sufficient under the circumstances.

20 C. The court held a hearing on May 2, 2013 at 2:00 p.m., to consider final approval of the
21 Settlement Agreement, as well as all timely and valid objections received from Class members.

22 D. The terms of the Settlement Agreement are fair, reasonable, and adequate under Federal
23 Rule of Civil Procedure 23.

24 E. The Settlement Agreement was negotiated at arm’s length and in good faith, and it is
25 fair, equitable and in the best interests of the Class members and Lending 1st.

26 F. Other good and sufficient cause exists for granting the relief requested in the Motion.
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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