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10 *[Additional counsel listed on signature page]*

11 Attorneys for Plaintiffs and the Class

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

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

17 Plaintiffs,

18 v.

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

21 Defendants.

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

CLASS ACTION

**JOINT NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND STIPULATION TO VACATE DEADLINES AND STAY ALL PENDING MOTIONS**

Judge: Hon. Claudia Wilken  
 Courtroom: 2, 4th Floor

Complaint Filed: August 29, 2007  
 Trial Date: Vacated

1 Pursuant to Federal Rule of Civil Procedure 6(b) and Local Rule 6-1(b), plaintiffs  
2 Armando Plascencia and Melania Plascencia (“Plaintiffs”), and defendant EMC Mortgage  
3 Corporation (“EMC”) (together, with Plaintiffs, the “Parties”), through their undersigned counsel,  
4 stipulate as follows:

5 WHEREAS, on August 21, 2009, the Court entered an Order granting in part and denying  
6 in part Plaintiffs’ class certification motion (Dkt. No. 178), certifying a Class to pursue claims for  
7 violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.* and common law fraud.

8 WHEREAS, on October 16, 2009, the Court appointed Plaintiffs Armando Plascencia and  
9 Melania Plascencia as the Class Representatives, the law firms of Smoger & Associates, Arbogast  
10 & Berns LLP<sup>1</sup>, Seeger Weiss LLP, and Williams Cuker Berezofsky as Class Counsel, and certified  
11 the following Class:

12 All individuals who, between August 29, 2003 and May 12, 2011, have or have had a  
13 Monthly Option ARM loan that: (a) was originated by LENDING 1st MORTGAGE and  
14 then sold or owned by LENDING 1st MORTGAGE OR EMC MORTGAGE  
15 CORPORATION; (b) was secured by real property in the United States; and (c) was  
16 originated or otherwise approved by Defendant LENDING 1st MORTGAGE within the  
17 State of California.

18 On November 29, 2010, the Court appointed J. Mark Moore of Spiro Moss LLP(now known as  
19 Spiro Moore LLP) as an additional class counsel. (Dkt. No. 246.)

20 WHEREAS, on February 24, 2012, the Court entered an order (Dkt. No. 328) granting the  
21 parties’ joint motion for administrative relief from the case management order (Dkt. No. 327)  
22 setting the final pretrial conference for October 24, 2012 at 2:00 p.m. and setting the trial date for  
23 November 5, 2012 at 8:30 a.m.

24 WHEREAS, on July 2, 2012, Plaintiffs filed their Motion for Partial Summary Judgment,  
25 or, in the Alternative, Summary Adjudication (Dkt. Nos. 349, 368);

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27 <sup>1</sup> On November 1, 2011, Notices of Firm and Address Change and of Change of Firm Name were  
28 filed documenting the change of class counsel from “Arbogast & Berns LLP” to “Arbogast Bowen  
LLP” and “Berns Weiss LLP.” (Dkt. Nos. 282, 283, and 284.)

1           WHEREAS, on July 13, 2012, EMC filed its Motion to Decertify the Class and Motion for  
2 Summary Judgment (Dkt. No. 356), Motion to Exclude the Testimony of Leonard Lyons (Dkt.  
3 No. 357), Motion to Exclude the Testimony of Jonathan Macey (Dkt. No. 358);

4           WHEREAS, on July 19, 2012, Plaintiffs filed their Motion to Exclude Testimony of Carol  
5 Young (Dkt. No. 364);

6           WHEREAS, on August 23, 2012, the Court took the Parties motions for partial summary  
7 judgment and motions to exclude the testimony of certain witnesses under submission (Dkt. No.  
8 395);

9           WHEREAS, on September 19, 2012, upon the Parties' stipulation, the Court vacated the  
10 October 24, 2012 final pretrial conference, the November 5, 2012 trial, and the deadlines  
11 enumerated in the Court's Order for Pretrial Preparation, and ordered that within seven (7) days of  
12 the Court's ruling on the parties' cross motions for summary judgment and motions to exclude, the  
13 parties were to submit a joint proposed schedule for the final pretrial conference and trial date, or  
14 if an agreement cannot be reached, separate proposed schedules (Dkt. Nos. 405, 406)

15           WHEREAS, the Parties participated in mediation in Philadelphia, Pennsylvania before the  
16 Hon. Diane M. Welsh (Ret.) of JAMS on May 22, 2013, and continued having settlement  
17 discussions thereafter with Judge Welsh's assistance (*See* Declaration of Lee A. Weiss, filed  
18 concurrently with this Stipulation, ¶6.);

19           WHEREAS, on May 28, 2013, the Parties agreed to a proposed class action settlement, but  
20 require additional time to prepare and execute a formal settlement agreement, and to prepare and  
21 file a motion for preliminary approval (*See* Declaration of Lee A. Weiss, filed concurrently with  
22 this Stipulation, ¶7.);

23           WHEREAS, no Party will be prejudiced by the relief requested in this Notice of Settlement  
24 and Stipulation; and

25           WHEREAS, this Notice of Settlement and Stipulation is without prejudice to, or waiver of,  
26 any rights or defenses otherwise available to the Parties in this action;

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1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, between Plaintiffs,  
2 by their undersigned counsel, and Defendant, by their undersigned counsel, that, subject to the  
3 approval of this Court:

4 (1) All pending motions currently under submission shall be taken off calendar  
5 pending the Court's consideration of the Parties' proposed class action settlement;

6 (2) a motion for preliminary approval of the parties' settlement shall be filed on or  
7 before July 8, 2013; and

8 (3) the proceedings in this action, except as they relate to consideration of the Parties'  
9 proposed settlement, shall be stayed in their entirety.

10 Respectfully submitted,

11 Dated: May 29, 2013

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Dated: May 29, 2013

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MORTGAGE CORPORATION



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**ORDER**

Pursuant to the Stipulation of counsel and for good cause shown, IT IS HEREBY ORDERED that:

- (1) all pending motions currently under submission are **denied without prejudice as moot** pending the Court’s consideration of the Parties’ proposed class action settlement;
- (2) a motion for preliminary approval of the parties’ settlement is to be filed on or before July 8, 2013; and
- (3) the proceedings in this action, except as they relate to consideration of the Parties’ proposed settlement, are stayed in their entirety.

**IT IS SO ORDERED.**

Dated: May 30, 2013

  
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HON. CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE