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January 18, 2022

VIA HAND DELIVERY

Marilyn Bentley
Clerk of the Court
Circuit Court for Baltimore City
Courthouse East
111 N. Calvert Street
Room 462E
Baltimore, Maryland 21202

RE: Timm, et al. v. Impac Mortgage Holdings, Inc.
Case No. 24C-11-008391

Dear Ms. Bentley:

Enclosed please find Curtis J. Timm's Memorandum in Response to Camac Fund LP's Motion to Certify Class and for Other Relief. Please file the enclosed documents on behalf of Curtis J. Timm, Plaintiff in the above-captioned matter.

Thank you for your attention to this matter. Please contact me with any questions or concerns.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'TC', is written over a horizontal line.

Thomas C. Costello

cc: The Honorable Lawrence Fletcher-Hill
(Via Hand Delivery)
All Counsel of Record
(Via Electronic Mail)

**IN THE CIRCUIT COURT
FOR BALTIMORE CITY, MARYLAND**

CURTIS J. TIMM, ET AL.)	
)	
Plaintiff,)	
)	
vs.)	Case No:
)	24C-11-008391
IMPAC MORTGAGE HOLDINGS, INC., ET AL.)	
)	
Defendants)	
)	

**CURTIS J. TIMM'S RESPONSE TO CAMAC FUND LP'S MOTION TO CERTIFY
CLASS AND FOR OTHER RELIEF**

Plaintiff, Curtis J. Timm ("Timm"), by his undersigned attorneys, hereby files this Memorandum in Response to Camac Fund LP's Motion to Certify Class and for Other Relief.

I. INTRODUCTION

On December 17, 2021, Plaintiff, Camac Fund LP ("Camac"), filed a motion which requests *inter alia*, that (1) a class be certified that includes all current and former owners of shares of Series B preferred stock ("Series B") issued by Impac Mortgage Holdings, Inc. ("Impac") from June 29, 2009 until the date of the class certification order, (2) three quarters of dividends be paid as damages; (3) Camac be appointed class representative, and (4) Camac's attorneys be appointed class counsel. While Timm agrees with Camac's arguments in favor of class certification under Maryland Rule 2-231(c)(2), Timm opposes (1) Camac's proposed definition of the class, (2) Camac's request that only three

dividends be paid, (3) Camac's request for appointment as class representative, and (4) Camac's request that its attorneys be appointed class counsel. As is set forth below, Camac has a conflict of interest with the proposed class and cannot fairly represent all class members.

II. ARGUMENT

A. CAMAC CANNOT FAIRLY REPRESENT THE PROPOSED CLASS

Maryland Rule 2-231(b)(4) requires that a class representative fairly and adequately protect the interests of the class. This requires that the class representative have no conflicts of interest with class members and be committed to vigorously prosecuting the interests of the class. *Philip Morris v. Angeletti*, 358 Md. 689, 740-41 (2000); *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d 283, 312 (D. Md. 1998). The absent class members have a constitutional right to fair representation under the due process clause of the Fourteenth Amendment. USCA Const Amend. XIV, § 1; *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S. Ct. 2965, 2974 (1985) ("the Due Process Clause of course requires that the named plaintiff at all times adequately represent the interests of the absent class members".) These requirements ensure that absent class members, who will be bound by the result of the litigation, are protected by a vigorous and competent prosecution of the case by someone who shares their interests. *Id.*

Camac cannot vigorously prosecute its own interests and the interests of the class it proposes. Camac is conflicted from acting as class representative on two separate grounds: (1) Camac intends to argue that certain members of its proposed class are not entitled to the payment of dividends; and (2) Camac is failing to vigorously argue for the full amount of damages and prejudgment interest to which the proposed class members are entitled.

With regard to the first basis for a conflict of interest, Camac is requesting that the proposed class include all current and former Series B preferred shareholders. However, Camac states that former shareholders are not entitled to any monetary relief. How can Camac adequately and vigorously represent all class members when it is taking the position that some members of the class it intends to represent are not entitled to monetary damages? This clear and irrefutable conflict prevents Camac from being named class representative. Timm's appointment as class representative is free from any conflicts as he intends to argue that all members of his proposed class are entitled to monetary relief.

The second basis for denying Camac's request to be class representative is its failure to seek the maximum available monetary recovery for aggrieved Series B preferred shareholders. Specifically, Camac takes the position that Series B shareholders are only entitled to the payment of three dividends and no prejudgment interest. Timm argues that all cumulative dividends

must be paid from 2009 until the date this Honorable Court orders Impac to declare and pay the dividends as a result of its unlawful actions in violating the terms of the 2004 Articles Supplementary. Timm is arguing for payment of at least 50 cumulative dividends plus prejudgment interest. Clearly, Timm's request for damages would be more beneficial to the proposed class members and indicates his desire that all class members receive the full compensation each is entitled to under the law.

B. THE FEDERAL AUTHORITY RELIED ON BY CAMAC DOES NOT SUPPORT ITS REQUEST FOR APPOINTMENT AS CLASS REPRESENTATIVE

Camac argues that as the largest stockholder who has participated in this litigation it should be appointed class representative because it has the largest financial interest in relief sought by the class. Camac Mem. at 20. In support, Camac points to an unreported memorandum opinion by Judge Audrey Carrion dated June 1, 2011 in the case captioned *In re Constellation Energy Group, Incorporated Shareholder Litigation*, Case No. 24-C-11-003015 ("*Constellation*"). In *Constellation*, Judge Carrion found the lead plaintiff requirements of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which contains a rebuttable presumption in favor of appointing the shareholder with the largest financial interest in the litigation, to be "instructive" in determining the appropriate lead counsel in a class action. 15 U.S.C.A. § 78u-4(a)(3)(B). Judge Carrion

considered several factors in selecting lead counsel, only one of which was the financial stake of the respective class members and made it clear that this factor was not dispositive of her decision. *Constellation*, 6.

The PLSRA's rebuttable presumption in favor of appointing the shareholder with the largest financial interest is rebutted with evidence that the largest shareholder will not fairly and adequately protect the interests of the class. *Id.* § 78u-4(a)(3)(B)(iii)(II)(aa); See *In re Enron Corp. Securities Litigation*, 206 F.R.D. 427 (2002) (finding that entity with largest financial stake was not an adequate class representative because it had interests antagonistic to other class members). Moreover, to limit the influence of "professional plaintiffs", the PSLRA also requires a lead plaintiff to certify that "it did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this chapter". 15 U.S.C. § 78u-4(a)(2)(A); *Chill v. Green Tree Fin. Corp.*, 181 F.R.D. 398, 410 (D. Minn. 1998).

While this case is not governed by the PSLRA, if it was, Camac would not meet its requirements for appointment as class representative. First, Camac would not be entitled to the presumption of adequacy as class representative as the largest shareholder because as a more recent shareholder, Camac's interest

in the Series B dividends conflicts with, and is antagonistic to, the interests of former Series B shareholders. Second, Camac would not be deemed a qualified lead plaintiff candidate because, as Camac's founder Eric Shahinian testified, Camac purchased its Series B shares after Timm filed suit in order to participate in this action. 15 U.S.C. § 78u-4(a)(2)(A). Timm Mem, Ex. B, ¶ 9.

C. CAMAC OVERSTATES ITS COUNSEL'S ROLE IN THIS LITIGATION

In support of its request for appointment as class representative and the appointment of its attorneys as class counsel, Camac makes several factual representations which are not accurate. Specifically, Camac states that since Timm terminated Mr. Minton's representation of him in April 2017 that it "alone pulled the laboring oar in this action". Camac. Mem. at 20. This is simply incorrect. Timm researched, wrote and filed memoranda in support of the cross motions for summary judgment and researched, wrote, and filed briefs with the Court of Special Appeals and Court of Appeals. See **EXHIBIT A**.¹ Timm continued to vigorously pursue his claims against Impac *pro se* and should be given credit for the successful outcome of this litigation. While Tydings & Rosenberg,

¹ The Costello Law Group is not seeking to be appointed class counsel and is not seeking to be paid attorney's fees or other compensation from the common fund. The role of the Costello Law Group is to assist and support Mr. Timm's efforts to be appointed class representative and class counsel and, once appointed, to support Mr. Timm's efforts to administer the claims lawfully and efficiently. Thomas C. Costello, Esq. has over 20 years of securities litigation experience and has served as co-class counsel in prior class action litigation. Anne L. Preston has eight years of securities litigation experience. See www.costellolawgroup.com.

LLP may be sufficiently qualified to serve as lead counsel in a class action, Timm should be appointed lead counsel and class representative in light of his tireless and timely efforts in this litigation. To reiterate, without Timm's timely filed complaint and years long dedication there would be no award for any shareholder.

Camac joined this litigation long after the statute of limitations would have expired and only bought the Series B Preferred Shares after it became aware of the Complaint filed by Timm and the merits of his claims. Timm Mem, Ex. B, ¶ 9. Moreover, the following evidence establishes that Camac's efforts to achieve a favorable outcome for the Series B Preferred Shareholders are inconsequential when compared to the efforts and determination of Timm:

- During the course of this eleven-year proceeding, both when Timm was represented by counsel and acted in a pro se capacity, Timm participated in the research and drafting of most of the motions, memoranda and other filings submitted on his behalf both at the trial court and appellate court phases of this litigation.
- Timm attended depositions, the only mediation session, hearings and appellate arguments.
- Since 2017, when Timm proceeded in a pro se capacity, as evidenced by the docket entries, Timm submitted multiple motions, memoranda and appellate briefs.
- While Timm did not keep time records detailing all of his work on this case. To the best of his recollection, and after reviewing the case file, Timm believes he worked on this litigation for approximately 4,300 hours.

- Timm was first introduced to Mr. Shahinian of Camac in approximately December 2013/January 2014 in his home in Florida. Mr. Shahinian reached out to Timm and his former attorney after trying unsuccessfully to negotiate a direct, confidential settlement with Impac representatives. Impac rejected Mr. Shahinian's attempt to strike a secret settlement on behalf of Camac and Timm advised Mr. Shahinian that his strategy was unsound. Specifically, it was Mr. Shahinian's desire to settle Camac's claims as a Series B Preferred Shareholder based upon the following formula: 1 share of Series B Preferred (approximately \$3 per share) for 1 share of Common Stock (approximately \$5 per share).
- Timm believed Mr. Shahinian's strategy was unsound because, based upon his observations and dealings with Impac management, it was highly unlikely that Impac would declare future dividend payments on its common stock and, instead, would use any available funds to increase management compensation. History has demonstrated that Timm's beliefs were correct.
- Based upon his observations, Timm also does not believe that Mr. Shahinian is aware of the details of Impac's finances and seems to be willing to resolve the lawsuit for less than fair value. Specifically, in 2015, Mr. Shahinian wrongly stated to Timm that Impac was in poor financial position and had "no money" to resolve the case. Impac's publicly available filings contradicted Mr. Shahinian's beliefs regarding Impac's alleged inability to pay full and fair compensations to the Series B Preferred Shareholders.
- Timm has been providing Mr. Shahinian's attorney with accurate financial information regarding Impac since 2015. In 2015, Impac acknowledged in its public filings that it earned \$80 million and had sold mortgage servicing rights for \$93 million. Faced with this evidence, Timm believes that Mr. Shahinian realized he had been fooled by Impac's claims of poverty and that he was not experienced enough to negotiate a settlement for the preferred shareholders.
- Thereafter, Mr. Shahinian and his attorney asked Timm to be the primary negotiator with Impac to try and resolve the class claims with the exception of those claims held by Camac. Mr. Shahinian's conduct in placing Timm as

primary negotiator with Impac, and his desire to exclude Camac's claims, indicated to Timm that Mr. Shahinian was solely working in Camac's own business interests and not the interests of the proposed class.

- Since June 2015, Timm has been primarily responsible for handling settlement negotiations with Impac.
- Timm has travelled to California, New York and Maryland to pursue the class claims and utilized his personal monies to pay the expenses of the case.
- During the course of the litigation and on multiple occasions, Timm has persevered to overcome adverse rulings on appeal and exercised his own judgment even over the objections of his own attorneys.
- Based upon Timm's observations of Mr. Shahinian's words and actions during the course of his case, it appears that Mr. Shahinian is only interested in protecting Camac's financial interests and has spent minimal personal time and effort advancing the interests of the class members. Mr. Shahinian did not attend court proceedings and only attended his own deposition.
- Timm has spent thousands of hours to represent the interests of the Series B Preferred Shareholders. Timm has 35 years of experience trying and settling lawsuits. Timm has never lost a jury case and for years had the loudest voice in a 29-attorney law firm.

See **EXHIBIT A**. Based upon this evidence, Timm is clearly best situated to serve as class representative and class counsel.

D. CAMAC'S REQUEST FOR DAMAGES IS INSUFFICIENT

Timm opposes Camac's proposed order to the extent that it only requires Impac to pay dividends for the second, third, and fourth quarters of 2009. The Court of Special Appeal's decision, which was affirmed by the Court of Appeals, makes it clear that

the question of whether damages in the form of dividend payments after 2009 would be owed has not been decided and is an outstanding issue for this court to decide. *Impac Mortgage Holdings, Inc. v. Timm*, 245 Md. App. at 126, n. 23; *Impac Mortgage Holdings, Inc. v. Timm*, 474 Md. 495 (2021).

This court has ruled that under the 2004 Articles Supplementary, Impac should have declared and paid dividends on the Series B shares through "the then current dividend period" when Impac repurchased its own stock in October 2009. A final order issued in this action will require Impac to declare and pay dividends. As such, the "then current dividend period" will be the date the dividends are declared and paid, which is presumably sometime in 2022. Therefore, Impac must be required to pay all accumulated dividends from 2009 through the date of the Court's Order in 2022 under the 2004 Articles Supplementary. *Timm Mem.*, Ex. A, § 3(d).

Timm also opposes Camac's request for an award of attorneys' fees from future dividends payable to Series B shareholders. It is simply impractical to monitor the actions of Impac in perpetuity. The most practical resolution is for Impac to pay all accumulative dividends from 2009 to the present. If, however, the Court orders that future accumulated dividend payments are subject to reduction for the payment of class representative and counsel fees, Timm should be permitted to receive the aforementioned fees as he is

the individual most responsible for the restoration of the Series B Preferred Shareholders rights under the 2004 Articles Supplementary.

CONCLUSION

For all of the foregoing reasons, Plaintiff, Curtis J. Timm, respectfully reiterates his request for appointment as class representative and class counsel.

Respectfully submitted,



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(410) 832-8800

Attorneys for Plaintiff,
Curtis J. Timm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 18, 2022 a copy of the foregoing was delivered via electronic mail to:

Daniel S. Katz
Tydings & Rosenberg LLP
One East Pratt Street
Suite 901
Baltimore, MD 21202

Attorney for Camac Fund, LP

and

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And

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And

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Attorneys for Impac Mortgage Holdings, Inc.



Thomas C. Costello

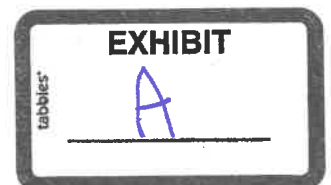
**IN THE CIRCUIT COURT
FOR BALTIMORE CITY, MARYLAND**

CURTIS J. TIMM, ET AL.)	
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Plaintiff,)	
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vs.)	Case No:
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IMPAC MORTGAGE HOLDINGS, INC., ET AL.)	
)	
Defendants)	
)	

SUPPLEMENTAL AFFIDAVIT OF CURTIS J. TIMM

I am over the age of eighteen (18) years and I am competent to testify as to the matters and facts stated herein, having personal first-hand knowledge of the matters and facts contained herein:

1. I am the Plaintiff in the above-captioned matter.
2. I have read the brief submitted by Camac Fund LP ("Camac") in which its attorneys, Messrs. Katz & Isbister, claim that since 2017 they "alone pulled the laboring oar in this action". Camac. Mem. at 20.
3. During the course of this eleven-year proceeding, both when I was represented by counsel and acted in a pro se capacity, I have participated in the research and drafting of most of the motions, memoranda and other filings submitted on my behalf both at the trial court and appellate court phases of this litigation.
4. I have also attended depositions, the only mediation session, hearings and appellate arguments.
5. Since 2017, when I have proceeded in a pro se capacity, as evidenced by the docket entries, I have submitted multiple motions, memoranda and appellate briefs.
6. I have not been able to participate in oral arguments since 10/02/19. This is due to a stroke I suffered which has limited my ability to speak but has not impacted my cognitive and/or intellectual abilities.



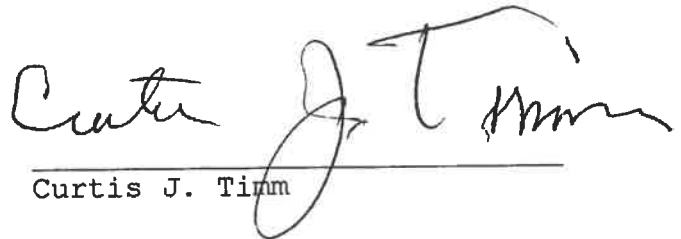
7. I did not keep time records detailing all my work on this case. To the best of my recollection, and after reviewing the case file, I believe I have worked on this litigation for approximately 4,300 hours.
8. I was first introduced to Mr. Shahinian of Camac in approximately December 2013/January 2014 in my home in Florida. Mr. Shahinian reached out to me and my former attorney after trying unsuccessfully to negotiate a direct, confidential settlement with Impac representatives. Impac rejected Mr. Shahinian's attempt to strike a secret settlement on behalf of Camac and I advised Mr. Shahinian that his strategy was unsound. Specifically, it was Mr. Shahinian's desire to settle Camac's claims as a Series B Preferred Shareholder based upon the following formula: 1 share of Series B Preferred (approximately \$3 per share) for 1 share of Common Stock (approximately \$5 per share).
9. I believed Mr. Shahinian's strategy was unsound because, based upon my observations and dealings with Impac management, it was highly unlikely that Impac would declare future dividend payments on its common stock and, instead, would use any available funds to increase management compensation. History has demonstrated that my beliefs were correct.
10. Based upon my observations, I also do not believe that Mr. Shahinian is aware of the details of Impac's finances and seems to be willing to resolve the lawsuit for less than fair value. Specifically, in 2015, Mr. Shahinian wrongly stated that Impac was in poor financial position and had "no money" to resolve the case. Impac's publicly available filings contradicted Mr. Shahinian's beliefs regarding Impac's alleged inability to pay full and fair compensations to the Series B Preferred Shareholders.
11. I have been providing Mr. Shahinian's attorney, Mr. Katz, with accurate financial information regarding Impac since 2015. In 2015, Impac acknowledged in its public filings that it earned \$80 million and had sold mortgage servicing rights for \$93 million. Faced with this evidence, I believe Mr. Shahinian realized he had been fooled by Impac's claims of poverty and that he was not experienced enough to negotiate a settlement for the preferred shareholders.
12. Thereafter, Mr. Shahinian and his attorney, Mr. Katz, also asked me to be the primary negotiator with Impac to try and

resolve the class claims with exception of those claims held by Camac. Mr. Shahinian's conduct in placing me as primary negotiator with Impac, and his desire to exclude Camac's claims, indicated to me that Mr. Shahinian was solely working in Camac's own business interests and not the interests of the proposed class.

13. Since June 2015, I have been primarily responsible for handling settlement negotiations with Impac. I have travelled to California, New York and Maryland to pursue the class claims and utilized my personal monies to pay the expenses of the case.
14. During the course of the litigation and on multiple occasions, I have persevered to overcome adverse rulings on appeal and exercised my own judgment even over the objections of my own attorneys.
15. Based upon my observations of Mr. Shahinian's words and actions during the course of his case, he appears to me be only interested in protecting Camac's own financial interests and has spent minimal personal time and effort advancing the interests of the class members. Mr. Shahinian did not attend court proceedings and only attended his own deposition.
16. The personal time and effort Mr. Shahinian has devoted to this case is inconsequential when compared to the personal time and effort I have expended over the last eleven years.
17. I have spent thousands of hours to represent the interests of the Series B Preferred Shareholders. I have 35 years of experience trying and settling lawsuits. I have never lost a jury case and for years had the loudest voice in a 29-attorney law firm.

I do solemnly swear and affirm under the penalties of perjury that the matters and facts contained in the foregoing affidavit are true and correct to the best of my personal knowledge, information and belief.

Dated: 1/18/22


Curtis J. Timm