

**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)	
)	

MOTION FOR CLASS CERTIFICATION AND OTHER RELIEF

Plaintiff, Curtis J. Timm ("Timm"), through his attorneys, hereby moves for class certification pursuant to Rule 2-231(c)(2). Plaintiff asks the Court to certify a class defined as follows:

All current owners of the 9.375% Series B Cumulative Redeemable Preferred Stock excluding any current or former officers, directors, partners, and employees of Impac Mortgage Holdings, Inc. as well as their family members, assigns or entities in which they have a controlling interest.

In addition, Timm asks this court for an order (1) appointing him class representative and class counsel; (2) requiring Impac Mortgage Holdings, Inc. to pay cumulative dividends from the second quarter of 2009 through the entry of a final order in this matter on the Series B shares held by class members; (3) awarding prejudgment interest at the statutory rate on the payment of those dividends; (4) requiring Impac Mortgage Holdings, Inc. to pay the expenses associated with providing notice to class members and processing the claims of class members; (5) awarding him attorneys'

and/or class representative fees based upon a percentage of the common fund recovered for the proposed class; and (6) awarding him expenses in the amount of \$14,036.69.

In support of this Motion, Timm states that the Complaint addresses the actions of Defendant, Impac Mortgage Holdings, Inc., in amending Articles Supplementary for the Series B Preferred Stock. These actions are generally applicable to the class, making appropriate final injunctive or corresponding declaratory relief. Further support for this Motion is contained in the accompanying Memorandum and Exhibits, which are incorporated herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 17, 2021 a copy of the foregoing was served via electronic mail on:

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Thomas C. Costello

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**MEMORANDUM IN SUPPORT OF MOTION FOR
CLASS CERTIFICATION AND OTHER RELIEF**

Plaintiff, Curtis J. Timm, by his undersigned attorneys, hereby files this Memorandum in Support of his Motion for Class Certification and Other Relief pursuant to Maryland Rule 2-231(c)(2).

INTRODUCTION AND RELEVANT FACTS

Defendant, Impac Mortgage Holdings, Inc. ("Impac"), is a publicly-held Maryland corporation with common stock and two classes of preferred stock, the 9.375% Series B Cumulative Redeemable Preferred Stock ("Series B"), and the 9.125% Series C Cumulative Redeemable Preferred Stock ("Series C"). *Impac Mortgage Holdings, Inc. v. Timm*, 245 Md. App. 84, 89 (2020). The two series of preferred stock were created in 2004 by separate Articles Supplementary amending the charter and had a liquidation value of \$25 per share. *Id.* The stock was considered "preferred" because, among other things, dividends had to be paid to the

preferred shareholders first before any dividend distributions to the common shareholders. **EXHIBIT A**, 2-3, Articles Supplementary 9.375% Series B Cumulative Redeemable Preferred Stock.

In 2009, Impac initiated a tender offer to purchase the outstanding Series B and Series C preferred stock at a tremendous discount, approximately \$0.28 and \$0.29 per share respectively. *Impac Mortgage Holdings, Inc. v. Timm*, 245 Md. App. at 89. The transaction was linked with a Consent Solicitation to amend the Articles Supplementary to eliminate certain preferences of untendered shares, specifically the right to cumulative dividends and the right to elect directors if dividends were not paid for six quarters. *Id.* at 90, **EXHIBIT A** at 6. Upon expiration of the offer, Impac announced that owners of two-thirds of the Series B and Series C shares, tallied together, approved the tender offer and that Impac was amending its charter to modify the terms of each series of preferred stock. *Impac Mortgage Holdings, Inc. v. Timm*, 245 Md. App. at 90-91. The amendments were filed on June 29, 2009. Although the holders of Series B and Series C preferred stock collectively tendered an aggregate of approximately 67.7% of the outstanding shares, Series B holders tendered only 66.2% of the outstanding Series B shares. *Id.*

Plaintiff, Curtis Timm ("Timm") is an owner of 37,025 Series B shares. Affidavit of Curtis J. Timm attached hereto as **EXHIBIT**

B, ¶ 2. On December 7, 2011, Timm filed suit against Impac on behalf of himself and a putative class of non-tendering shareholders to challenge the validity of the 2009 amendments to the Articles Supplementary. Impac moved for dismissal, arguing that Timm failed to state a claim upon which relief could be granted. On January 28, 2013, the circuit court entered judgment in Impac's favor on three counts leaving Counts I, IV, and VI. Count I alleges that the purported amendment of the Series B Articles was ineffective because of the failure to obtain sufficient consents. Count IV alleges that Impac is required to pay cumulative dividends to series B shareholders as a result of a repurchase of shares by Impac in the fourth quarter of 2009. Count VI alleges that as a result of the failure to make dividend payments, Impac is required to hold a special election and allow the Series B shareholders to elect two additional directors.

On March 5, 2014, Camac Fund LP ("Camac"), intervened as a co-plaintiff. Camac is an opportunistic hedge fund operated by Eric Shahinian that first purchased Series B shares in September 2012, after Timm filed suit. **EXHIBIT B**, ¶ 9. Shahinian's strategy is to purchase undervalued stock and that he became interested in investing in Impac preferred shares based in part on Timm's lawsuit. *Id.*

After several years of litigation, Judge W. Michel Pierson, ruled on cross-motions for summary judgment ordering declaratory

and injunctive relief in favor of Plaintiff. Judge Pierson found that the 2009 amendments to the Series B Articles were not valid, and that the 2004 Series B Articles remained in full force and effect. Judge Pierson declared that dividends were owed on the Series B shares, and that Impac was required to hold a special election for the Series B shareholders to elect two new directors under a provision in the 2004 Articles. In his memorandum opinion, Judge Pierson stated "The court's rulings to date do not resolve all the issues necessary to the conclusion of litigation in this court. The primary issue for resolution is the identity of the persons entitled to dividends on Series B shares. The parties agree that this issue requires class proceedings. In addition, there will be claims for attorneys' fees." He certified an appealable order of the resolved claims under Rule 2-602(b), leaving limited issues outstanding. He granted Impac's motion to stay the election of two directors during the appeal.

On cross-appeals by Impac and Timm, the Court of Special Appeals affirmed the judgment on all claims. *Impac Mortgage Holdings, Inc. v. Timm*, 245 Md. App. at 91. The Court of Appeals granted Impac's petition for review and on July 15, 2021, the affirmed the Circuit Court and Court of Specials Appeals in granting summary judgment in favor of Plaintiffs. The Court of Appeals agreed with Plaintiffs that the 2004 Articles Supplementary were not validly amended. *Impac Mortgage Holdings,*

Inc. v. Timm, 474 Md. 495 (2021). As a result, the 2004 Articles Supplementary are still in effect and govern the Series B shareholders' rights.

Timm requests that the court certify a class defined as follows:

All current owners of the 9.375% Series B Cumulative Redeemable Preferred Stock excluding any current or former officers, directors, partners, and employees of Impac Mortgage Holdings, Inc. as well as their family members, assigns or entities in which they have a controlling interest.

In addition, Timm, asks this court for an order (1) appointing him class representative and class counsel; (2) requiring Impac Mortgage Holdings, Inc. to pay cumulative dividends from the second quarter of 2009 through the entry of a final order in this matter on the Series B shares held by class members; (3) awarding prejudgment interest at the statutory rate on the payment of those dividends; (4) requiring Impac Mortgage Holdings, Inc. to pay the expenses associated with providing notice to class members and processing the claims of class members; and (5) awarding him attorneys' and/or class representative fees based upon a percentage of the common fund recovered for the proposed class; and (6) expenses in the amount of \$14,036.69.

STANDARD OF REVIEW

The trial court has discretion in deciding whether to certify a class, accepting as true the allegations made by the named

plaintiff regarding the elements of class certification and refraining from evaluating the underlying merits of the case. *Silver v. Greater Baltimore Med. Ctr., Inc.*, 248 Md. App. 666, 719 (2020) ("The decision whether to certify class is discretionary, entrusted to the circuit court's sound judgment..."). While a court may go beyond the pleadings to the extent necessary to understand the claims, defenses, relevant facts, and applicable substantive law to make a meaningful determination of the class certification issues, that determination should not rest upon the merits of the underlying causes of action. *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 726-27 (2000).

A decision to grant class certification is not a final order; it "may be conditional and may be altered or amended before the decision on the merits." Rule 2-231(d). Therefore, in a close case, certification should generally be granted because the Court retains the ability to mold or modify any class certification order to the evolving circumstances of the case.¹ *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3d Cir.), cert. denied, 474 U.S. 946 (1985); See *Spark v. MBNA Corp.*, 178 F.R.D. 431 (D. Del. 1998); *Jordan v. Global Natural Resources, Inc.*, 102 F.R.D. 45, 49 (S.D. Ohio 1984).

¹Maryland Rule 2-231 parallels Rule 23 of the Federal Rules of Civil Procedure and Maryland courts look to federal jurisprudence as persuasive authority. *Philip Morris*, 358 Md. at 724.

ARGUMENT

I. CLASS ACTION CERTIFICATION IS APPROPRIATE

Maryland Rule 2-231 authorizes class action litigation. Md. 2-231. Rule 2-231(b) contains four preliminary requirements: numerosity, commonality, typicality, and adequacy of representation. These prerequisites are necessary but not sufficient for class certification; the proposed class also must satisfy one of three subcategories of Rule 2-231(c). *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 727 (2000).

In addition to the prerequisites set forth in 2-231(b), the proposed class or classes must also satisfy one of the three subsections of Rule 2-231(c):

(1) the prosecution of separate actions by individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by members of the class, (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, (D) the difficulties likely to be encountered in the management of a class action.

Md. Rule 2-231(c). As is set forth below, Plaintiffs' claims against Impac meet the requirements of 2-231(b) and 2-231(c)(2) because Impac's wrongdoing is generally applicable to all Preferred B shareholders and it is appropriate to apply any final injunctive and declaratory relief to the class as a whole.

A. THE PROPOSED CLASS SATISFIES RULE 2-231(b)

1. Numerosity

A putative class must be so numerous that joinder of all members is impracticable. Md. Rule 2-231(b). The purpose of the numerosity requirement is judicial economy. *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 732 (2000). If joinder of the actions is practicable, then a class action is unnecessary. *Id.* Here, there are 665,592 Series B shares outstanding held by thousands of individual shareholders. **EXHIBIT C**, 3, Impac Form 10-Q for quarter ending September 30, 2021. Impac does not dispute that the putative class meets the numerosity requirement. Defendant's Opposition to Class Certification, at 11-12.

2. Commonality

The commonality prerequisite requires that there are questions of law or fact common to the class. Md. Rule 2-231(b). Litigating common issues once on behalf of all class members promotes judicial economy and uniformity of decision. *Philip Morris*, 358 Md. at 734. The commonality threshold is not a high one and is easily met in most cases. *Minter v. Wells Fargo Bank, N.A.*, 274 F.R.D. 525, 533 (D. Md. 2011) (commonality is satisfied when class members' claims share at least one legal or factual element).

The salient legal and factual issues are the same for the proposed class of Series B shareholders. They suffer the same injury - the deprivation of their rights as a result of Impac's invalid amendment of the Articles Supplementary and subsequent failure to pay the required dividends and hold the requisite election. A determination of Impac's liability does not require an individual inquiry into conduct toward each putative class member. *cf Creveling v. Gov't Employees Ins. Co.*, 376 Md. 72, 91 (2003).

3. Typicality

The typicality prerequisite requires that claims of the representative parties are typical of the claims of the class. Md. Rule 2-231(b). "The [typicality] requirement demands a common-sense inquiry into whether the incentives of the plaintiffs are

aligned with those of the class, and are meant to insure that representative parties will adequately represent the class." *Philip Morris*, 368 Md. at 737-38.

Plaintiff's claims and the claims of the Class arise from the same course of conduct undertaken by Impac, are predicated upon the same legal theories, and Plaintiff's interest in vindicating those claims is perfectly aligned with the interests of the absentee Class members. Timm has been harmed by the alleged acts and omissions of Impac in precisely the same manner as the other Series B shareholders because those alleged acts and omissions are in violation of the Articles which granted all Series B shareholders the same rights. Thus, Timm's claims against Impac are typical of the claims of all other Series B shareholders as contemplated by Rule 2-231(b)(3).

4. Adequacy of Representation

For class certification, the representative parties must fairly and adequately protect the interests of the class. Md. Rule 2-231(b). To satisfy this standard, the class representative must have no conflicts of interest with class members and must be committed to prosecuting the action vigorously on behalf of the class. *Philip Morris*, 358 Md. at 740-41; *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d, 283 312 (D. Md. 1998). These requirements are directed to due process concerns and are intended to assure 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.

As noted above, Timm's interests in this litigation are directly aligned with his fellow Series B shareholders who are the absent Class members. There are no competing complaints or dissident shareholders. As a lawyer, Mr. Timm is keenly aware of his fiduciary duty to the class; he divested himself of all Impac common stock that he owned, because he felt there was a conflict of interest in his continued ownership of it while prosecuting this class action. **EXHIBIT B**, ¶ 8, **EXHIBIT D**, 22-24.

Timm has aptly demonstrated a sophisticated understanding of the complex issues and facts of this case and a commitment to vigorous prosecution on behalf of himself and his fellow Series B shareholders. Without Timm 's efforts on behalf of all Series B shareholders, there would be no lawsuit. Timm is the only Impac preferred shareholder who noticed the discrepancy hidden deep in Impac's corporate public filings that showed that Impac did not receive consent to the proposed amendments from two thirds of the Preferred B shareholders. **EXHIBIT D**, 36-43. He has worked tirelessly over the last 12 years to hold Impac accountable for its actions. Throughout the deliberation of this matter by three separate courts, the case could not get around the fact that there was never a two-thirds vote to amend the Articles Supplementary.

Timm in all his years of practice was judicious in only taking on cases which his clients had 75% of the equities on their side. Timm has known he was correct since 2009 and could not allow Impact to steal his hard-earned money nor the value that should have been afforded to the other shareholders.

In determining if there is adequacy of representation, courts also look to the adequacy of the representative's counsel. "Factors in this analysis include the vigor of counsel, experience, and diligence." See *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 741 (2000). For much of the last 12 years, Timm served as his own counsel. **EXHIBIT B**, ¶ 2. Timm is a retired attorney who practiced in Florida for about 35 years, handling a wide variety of matters, but primarily tax and corporate cases. *Id.* at ¶ 3. He tried dozens of jury trials, mostly in federal court.² *Id.* He has also been a registered securities broker-dealer. *Id.* In that capacity, he originated six public limited partnerships in which he was the co-general partner. *Id.* He manages investment trusts for family members and others. *Id.*, **EXHIBIT D**, 10-12.

Camac is also seeking class certification of the current Series B shareholders and appointment as class representative. While Timm agrees with its request for class certification, he

²Undersigned counsel is not seeking appointment as class counsel but will provide support to Timm as needed if he is appointed Class Representative.

opposes the appointment of Camac as class representative. Camac was not a Series B shareholder at the time of the tender offer and attempt to amend the Articles Supplementary. *Impac Mortgage Holdings, Inc. v. Timm*, 474 Md. 495, n. 23 (2021). Camac's founder and principal, Eric Shahinian, purchased Series B shares in the Camac Fund after learning of Timm's lawsuit against Impac. **EXHIBIT B**, ¶¶ 9-10. One of Camac's investment strategies is to scavenge undervalued shares of stock involved in litigation. *Id.* Were it not for Timm's timely filing of this lawsuit in 2011, Camac would not have any viable claim against Impac. Given Timm's tireless and timely efforts, it is appropriate that he be appointed class representative.

B. CERTIFICATION IS APPROPRIATE UNDER RULE 2-231(C) (2)

Plaintiff seeks class certification under subsection (c) (2) of Rule 2-231 which reads:

the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Md. Rule 2-321(c) (2). This subsection contains two requirements, an act requirement (that the defendant's conduct is generally applicable to the whole class), and an injunction requirement (that the injunctive relief sought by plaintiff is an appropriate remedy

for the whole class). *Silver v. Greater Baltimore Med. Ctr., Inc.*, 248 Md. App. 666, 712 (2020).

For Impac's actions to have been "generally applicable", Impac must have "acted in a consistent manner towards members of the class so that [their] actions may be viewed as part of a pattern of activity [as] to all members." *Leszczynski v. Allianz Ins.*, 176 F.R.D. 659, 673 (S.D. Fla. 1997). Thus, courts have certified (c)(2) classes most frequently when "defendants engaged in uniform conduct as to all members of the proposed class." *In re Managed Care Litig.*, 209 F.R.D. at 686, citing *Clay v. Am. Tobacco Co.*, 188 F.R.D. 483 (S.D. Ill. 1999).

1. Class Certification of Count I

In Count I, Plaintiff sought a declaration that Impac breached the Articles Supplementary by attempting to amend them without the requisite number of votes. The action requirement of Rule 2-231(c)(2) is satisfied because all the acts and omissions alleged in the Complaint regarding Impac's invalid amendment of the Articles Supplementary affect Series B shareholders as a whole. The injunction requirement is also satisfied because the declaratory relief requested by Plaintiff is an appropriate remedy for Impac's breach as it restores the rights of Series B shareholders under the 2004 Articles Supplementary. See **EXHIBIT C**, 30 ("the 2009 amendments to the Preferred B Articles

Supplementary were not validly adopted and the 2004 Preferred Articles Supplementary remain in effect.").

2. Class Certification of Count IV

In Count IV, Plaintiff alleges that Impac breached the Articles Supplementary when it redeemed stock in October 2009 without first paying or setting aside payment of all past dividends and seeks an injunction requiring Impac to pay those Series B dividends. As in Count I, the action requirement of Rule 2-231(c)(2) is satisfied because Impac's failure to pay dividends at the time of the redemption affected every Series B shareholder in proportion with their share ownership. The injunction requirement is also met because the remedies requested by Plaintiffs, the payment of dividends to the Series B shareholders, is appropriate. It would not be appropriate for Impac to pay the past dividends it owes to only the named Plaintiffs in this action and not the other shareholders.

3. Class Certification of Count VI

In Count VI, Plaintiff sought an injunction requiring Impac hold a special election to allow Series B shareholders to elect two directors to Impac's board pursuant to the Articles Supplementary. The Articles Supplementary entitle the Series B shareholders to call a special meeting for the election of two directors after six quarters of non-payment of dividends (which

Directors will remain on the Company's Board of Directors until such time as all accumulated dividends on the Preferred B have been paid or set aside for payment). **EXHIBIT A**, 6. Impac's failure to conduct such election and abide the terms of Articles Supplementary is applicable to all Series B shareholders in the same way. In addition, the injunctive relief sought by Plaintiff provides an appropriate remedy for such an injury, for the current Series B shareholders participate in the belated election. This court has already ordered injunctive relief requiring Impac to hold a special election to elect new directors under the non-amended articles and to pay certain dividends. Given the fact that this remedy extends to current Series B shareholders, the Series B shareholders should be permitted to join as a class.

II. PLAINTIFF'S REQUEST FOR DAMAGES

A. UNPAID DIVIDENDS

Timm seeks immediate payment of all accumulated dividends. The Court of Special Appeals' decision, which was affirmed by the Court of Appeals, noted 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).

The Articles Supplementary, which are in effect, state:

[U]nless full cumulative dividends on the Series B Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, . . . [no] shares of Common Stock, or any shares of preferred stock of the Corporation ranking junior to or on parity with the Series B Preferred Stock . . . [shall] be redeemed, purchased or otherwise acquired for any consideration . . . by the Corporation. . .

EXHIBIT A, § 3(d). It is undisputed that Impac purchased its own shares on October 21, 2009 without first paying unpaid dividends for all past dividend periods through "the then current dividend period" which at the time was the first, second and third quarters of 2009.³ The payment of those dividends was a condition precedent necessary for a valid redemption by Impac. Although the redemption cannot be unwound or rescinded at this late date, it cannot be effective until Impac sets aside a sum sufficient for the payment of all past dividends through the current dividend period, which

³ If Impac fails to pay a cumulative dividend on the last day of any calendar quarter, the amount of that dividend automatically becomes a current liability of Impac as an "unpaid cumulative dividend". **EXHIBIT A**. Impac's Form 10-Q for the quarter ending September 30, 2021 reports cumulative undeclared dividends in arrears of approximately \$18.7 million or \$28.13 per outstanding share thereby increasing the liquidation value to approximately \$53.13 per share. **EXHIBIT C**, 31. The Form 10-Q falsely states that the liquidation preference, inclusive of the Series B cumulative undeclared dividends in arrears, is only payable upon declaration by the Board of Directors, settlement, voluntary or involuntary liquidation, dissolution or winding up of Impac's affairs. *Id.* This statement is not accurate because the 2004 Articles Supplementary are still in effect and Impac is required to pay cumulative unpaid dividends upon repurchase of its own stock. **EXHIBIT A**, 2,4-5. The Series B dividends are still outstanding and owed to the preferred shareholders. Dividends continue to be cumulative and a current corporate liability.

is a date which will likely occur in 2022. As such, Impac should be required to pay dividends through the "then current dividend period" when it satisfies the necessary condition for the repurchase of its shares.

It has taken 12 years of tireless effort by Timm to establish that the Articles Supplementary were in full force at the time of the repurchase and limited Impac's ability to repurchase its own shares at that time. If Impac acknowledged that the 2004 Articles had not been validly amended, it could have simply paid the three quarters of dividends it owed to the Series B shareholders at the time of its repurchase. Instead, Impac forced Plaintiffs to undergo 12 years of litigation. During the course of that litigation, evidence came to light which establishes that Impac took efforts to mislead the court and the parties about their consent solicitation process.⁴ A sense of fairness and equity dictates

⁴ In Spring of 2015, the attorneys for Impac abandoned their false claims made in its motion to dismiss once Timm presented evidence that Impac misrepresented the role of American Stock Transfer and Trust (AmStock) in Impac's consent solicitation process. AmStock was the named Depositary in the 2009 Offer to Purchase for Cash and Consent Solicitation. An AmStock employee named Lindsay Kies provided affidavit testimony on March 12, 2015 that AmStock had no involvement with shareholder votes and was not able to produce any documents regarding the consent solicitation process. It was only after years of litigation that Impac and its attorneys, specifically Pamela Palmer, acknowledged that there were no consents or votes from AmStock and that Impac received the consents electronically in 2009. During these years of misleading the court and the parties about how it was able to get shareholders to sell their preferred shares for pennies, Impac, while falsely asserting that the company was essentially broke, was paying its officers and principals large bonus payments of \$600,000 or more each.

that Impac should be required to pay all of the currently outstanding dividends. As of September 30, 2021, Impac owed unpaid cumulative dividends for 50 dividend periods (June 30, 2009 to September 30, 2021) totaling approximately \$18.7 million. **EXHIBIT C, 31.**

In its quarterly report filed with the Securities and Exchange Commission, Impac stated that is in a financial position to pay a judgment in this matter and the other legal actions current pending against it:

Based on the Company's current understanding of these pending legal actions and proceedings, management does not believe that judgments or settlements arising from pending or threatened legal matters, individually or in the aggregate, will have a material adverse effect on the consolidated financial position, operating results or cash flows of the Company.

EXHIBIT C, 27. Any attempts by Impac to argue that it is not in a financial condition to pay the proposed class all unpaid accumulated dividends on their Series B shares should be viewed warily.

Plaintiff, on behalf of all Series B shareholders, is also seeking pre-judgement interest at 6% on the unpaid accumulated dividends as permitted by Maryland law. Pre-judgment interest is allowable as a matter of right when "the obligation to pay and the amount due had become certain, definite, and liquidated by a specific date." *Gordon v. Posner*, 142 Md. App. 399, 437, (2002), MD. CONST. art. III, § 57. The award of interest is appropriate in

cases where the court compels the payment of dividends. See *E. Shaw Laminar Portfolios, LLC v. Archon Corp.*, 755 F. Supp. 2d 1122, 1130 (D. Nev. 2010); *Giesecke Devrient Mobile Sec. Am., Inc. v. Nxt-ID, Inc.*, No. CV 2020-0664-PAF, 2021 WL 982597, at *12 (Del. Ch. Mar. 16, 2021). As of September 30, 2021, prejudgment interest on the approximately \$18.7 million in cumulative unpaid Series B dividends currently equals \$7,152,750. See **EXHIBIT E**. The prejudgment interest continues to accrue as this litigation continues.

B. ATTORNEYS' FEES AND EXPENSES

Timm is entitled to attorneys' fees for his efforts in this litigation under the Common Fund Doctrine. Maryland generally follows the "American Rule" which requires each side in litigation to pay its own attorney's fees absent statute, common law exception or contract. *Hess Constr. Co. v. Bd. of Educ.*, 341 Md. 155, 159, 669 A.2d 1352 (1996). Maryland recognizes the Common Fund Doctrine, a common law exception when one party secures a recovery for a group or class. *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 662 (2003) (common fund doctrine permitted recovery of attorney's fees from monetary award obtained by limited partner on breach of contract suit for recovery of development fee owed to partners). The underlying theory is that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. *Id.*

Here, the Series B shareholders would undoubtedly be unjustly enriched by the payment of dividends by Impac due to the zealous efforts of Timm over the last 12 years. Timm has more than thirty years' experience as a corporate lawyer and has served as his own counsel, and counsel for the putative class of Series B shareholders. **EXHIBIT B**, ¶¶ 3-7. Timm has worked tirelessly for twelve years to establish that Impac's amendment of the Series B preferred Articles Supplementary was not valid and that it owed accumulated unpaid dividends to its Series B Preferred Shareholders. *Id.* By winning the case, Timm, as an advocate for the Series B Preferred Shareholders, has restored not only their rights to be paid accumulated dividends, but also their rights to be represented on the Board of Directors of Impac. Allowing Timm to obtain attorney's fees from the common fund recovered on behalf of Series B shareholders would prevent their unjust enrichment at his expense.

Timm requests that he be awarded attorneys' fees based on a percentage of the common fund.⁵ The size of the common fund is a principal factor in determining what is a reasonable fee. *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 465, (D. Md. 2014); *In*

⁵ Timm anticipates requesting a fee equal to one-third (33.33%) of the common fund, which is within the typical range for common fund cases. See *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 465, (D. Md. 2014) (noting common fund fees range from 15% to 40%). Based on \$18.7 million in accrued unpaid Series B dividends as of September 30, 2021, a 33.33% fee equals \$6,232,710. After taxes this amounts to approximately \$3,963,530.30.

re *Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d, 283 312 (D. Md. 1998) (noting that percentage awards generally decrease as the amount of the recovery increases). As such, Timm requests that he be permitted to present evidence in support of his request for a specific percentage once a class has been certified, a class representative appointed, and damages pursuant to Count IV calculated.

In the event that Timm is not awarded attorneys' fees, Timm alternatively seeks an incentive award for his efforts in bringing this action. Incentive fees are commonly awarded in class action lawsuits in order "to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Berry v. Schulman*, 807 F.3d 600, 613 (4th Cir. 2015). What constitutes an appropriate incentive payment depends on "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 483, 2014 WL 1603735 (D. Md. 2014). As set forth above, Plaintiff has worked arduously to successfully restore the Series B shareholders' rights under the Articles Supplementary. **EXHIBIT B**, ¶¶ 2-7. The degree to which the proposed class has

financially benefited from these efforts depends on the court's calculation of damages on Count IV. Plaintiff requests that he be permitted to present evidence in support of his request for an incentive award once this court calculates the damages to be awarded pursuant to Count IV.

Plaintiff also requests that Impac be required to pay any expenses of providing notice to the class members and processing their claims. *See In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d, 283 312 (D. Md. 1998); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 690, 2013 WL 5506027 (D. Md. 2013).

CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court:

- (a) certify a class pursuant to Rule 2-231(c)(2) defined as:
All current owners of the 9.375% Series B Cumulative Redeemable Preferred Stock excluding any current or former officers, directors, partners, and employees of Impac Mortgage Holdings, Inc. as well as their family members, assigns or entities in which they have a controlling interest.
- (b) appoint him class representative and class counsel;

- (c) require Impac to pay the expenses associated with providing notice to class members and processing the claims of class members;
- (d) declare that Impac is required to pay cumulative dividends from June 30, 2009 through the date of its order plus 6% prejudgment interest on the Series B shares held by class members; and
- (e) award him attorneys' fees, or in the alternative, an incentive award, based on a percentage of the common fund, plus expenses.

Respectfully submitted,



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(410) 832-8800

Attorneys for Plaintiff,
Curtis J. Timm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 17, 2021 a copy of the foregoing was delivered via electronic mail:

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

Attorney for Camac Fund, LP

and

G. Stewart Webb, Jr.
Michael Wilson
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750 East Pratt Street, Suite 900
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And

Pamela S. Palmer
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350 South Grand Ave
Two California Plaza
Suite 3400
Los Angeles, CA 90071

And

Kevin Crisp
Troutman Pepper Hamilton Sanders LLP
Suite 1400
Irvine, CA 92614

Attorneys for Impac Mortgage Holdings, Inc.



Thomas C. Costello

**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)	
_____)	

REQUEST FOR HEARING

Plaintiff, Curtis J. Timm, through his attorneys, pursuant to Maryland Rule 2-311(f), hereby requests a hearing on his Motion for Class Certification and Other Relief.

Respectfully submitted,



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Attorneys for Plaintiff,
Curtis J. Timm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 17, 2021 a copy of the foregoing was served via electronic mail on:

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

Attorney for Camac Fund, LP

and

G. Stewart Webb, Jr.
Michael Wilson
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And

Pamela S. Palmer
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Suite 3400
Los Angeles, CA 90071

And

Kevin Crisp
Troutman Pepper Hamilton Sanders LLP
Suite 1400
Irvine, CA 92614

Attorneys for Impac Mortgage Holdings, Inc.



Thomas C. Costello

EX-3.8 2 dex38.htm FORM OF ARTICLES SUPPLEMENTARY

Exhibit 3.8

IMPAC MORTGAGE HOLDINGS, INC.**Articles Supplementary****9.375% Series B Cumulative Redeemable Preferred Stock**

Impac Mortgage Holdings, Inc., a Maryland corporation (the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: Under a power contained in Article VI of the Articles of Amendment and Restatement of the Corporation, as amended and supplemented (the "Charter"), the Board of Directors by duly adopted resolutions classified and designated 7,500,000 shares of authorized but unissued Preferred Stock (as defined in the Charter) as shares of 9.375% Series B Cumulative Redeemable Preferred Stock, with the following preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption, which, upon any restatement of the Charter, shall become part of Article VI of the Charter, with any necessary or appropriate renumbering or relettering of the sections or subsections hereof.

Series B Preferred Stock

(1) DESIGNATION AND NUMBER. A series of preferred stock, designated the "9.375% Series B Cumulative Redeemable Preferred Stock" (the "Series B Preferred Stock"), is hereby established. The number of shares of the Series B Preferred Stock shall be 7,500,000.

(2) RANK. The Series B Preferred Stock shall, with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up of the Corporation, rank (a) senior to all classes or series of Common Stock, to the Series A Junior Participating Preferred Stock (as defined in the Charter) and to all equity securities of the Corporation the terms of which specifically provide that such equity securities rank junior to such Series B Preferred Stock; (b) on a parity with all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank on parity with the Series B Preferred Stock; and (c) junior to all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank senior to the Series B Preferred Stock. The term "equity securities" shall not include convertible debt securities.

(3) DIVIDENDS.

(a) Holders of the then outstanding shares of Series B Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate of 9.375% of the \$25.00 liquidation preference per annum (equivalent to a fixed annual amount of \$2.34375 per share). Such dividends shall be cumulative from the first date on which any Series B Preferred Stock is issued and shall be payable quarterly in arrears on March 31, June 30, September 30, and December 31 of each year or, if not a business day, the prior preceeding business day (each, a "Dividend Payment Date"). Any dividend payable on the Series B Preferred Stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months (it being understood that the dividend payable on June 30, 2004 will be for less than the full dividend period). Dividends will be payable to holders of record as they appear in the stock records of the Corporation at the

EXHIBIT A

close of business on the applicable record date, which shall be the first day of the calendar month on which the applicable Dividend Payment Date falls or on such other date designated by the Board of Directors of the Corporation for the payment of dividends that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date").

(b) No dividends on shares of Series B Preferred Stock shall be declared by the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibit such declaration, payment or setting apart for payment or provide that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law.

(c) Notwithstanding the foregoing, dividends on the Series B Preferred Stock shall accrue whether or not the terms and provisions set forth in Section 3(b) hereof at any time prohibit the current payment of dividends, whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series B Preferred Stock will accumulate as of the Dividend Payment Date on which they first become payable.

(d) Except as provided in Section 3(e) below, unless full cumulative dividends on the Series B Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or in shares of any series of preferred stock ranking junior to the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation) shall be declared or paid or set aside for payment nor shall any other distribution be declared or made upon the Common Stock, or any preferred stock of the Corporation ranking junior to or on a parity with the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation, nor shall any shares of Common Stock, or any shares of preferred stock of the Corporation ranking junior to or on a parity with the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation (except by conversion into or exchange for other capital stock of the Corporation ranking junior to the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation and except for transfers made pursuant to the provisions of Article VII of the Charter).

(e) When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) on the Series B Preferred Stock and the shares of any other series of preferred stock ranking on a parity as to dividends with the Series B Preferred Stock, all dividends declared upon the Series B Preferred Stock and any other series of preferred stock ranking on a parity as to dividends with the Series B Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series B Preferred Stock and such other series of preferred stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series B Preferred Stock and such other series of preferred stock (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend) bear to each other. No interest,

or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on Series B Preferred Stock which may be in arrears.

(f) Any dividend payment made on shares of the Series B Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable. Holders of the Series B Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or stock in excess of full cumulative dividends on the Series B Preferred Stock as described above.

(4) LIQUIDATION DISTRIBUTION.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series B Preferred Stock then outstanding are entitled to be paid out of the assets of the Corporation, legally available for distribution to its stockholders, the sum of (a) a liquidation preference of \$25.00 per share, (b) an amount equal to any accrued and unpaid dividends (whether or not declared) to the date of payment and (c) the applicable premium (expressed in dollar amount) per share during the applicable period as set forth in the table below, before any distribution of assets is made to holders of Common Stock or any series of preferred stock of the Corporation that ranks junior to the Series B Preferred Stock as to liquidation rights:

12-Month Period	Applicable Premium
May 28, 2004 to May 27, 2005	\$ 2.00
May 28, 2005 to May 27, 2006	\$ 1.75
May 28, 2006 to May 27, 2007	\$ 1.50
May 28, 2007 to May 27, 2008	\$ 1.00
May 28, 2008 to May 27, 2009	\$ 0.50
May 28, 2009 and thereafter	\$ 0.00

(b) In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series B Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Corporation ranking on a parity with the Series B Preferred Stock in the distribution of assets, then the holders of the Series B Preferred Stock and all other such classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(c) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series B Preferred Stock will have no right or claim to any of the remaining assets of the Corporation.

(d) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series B Preferred Stock at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other corporation, trust or entity or of any other corporation with or into the Corporation, or the sale, lease or conveyance of all or substantially all of the assets or business of the Corporation, shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

(5) REDEMPTION.

(a) *Right of Optional Redemption.* The Series B Preferred Stock is not redeemable prior to the fifth year anniversary of the issuance of the Series B Preferred Stock, has no stated maturity and will not be subject to any sinking fund or mandatory redemption. However, in order to ensure that the Corporation continues to qualify as a real estate investment trust ("REIT") for federal income tax purposes, the Series B Preferred Stock will be subject to the provisions of Article VII of the Charter. Pursuant to Article VII, and without limitation of any provisions of such Article VII, Series B Preferred Stock, together with other equity stock of the Corporation, owned by a stockholder in excess of the Aggregate Stock Ownership Limit (as defined in the Charter) will automatically be transferred to a Trust (as defined in the Charter) for the benefit of a Charitable Beneficiary (as defined in the Charter). On and after the fifth year anniversary of the issuance of the Series B Preferred Stock, the Corporation, at its option and upon not less than 30 nor more than 60 days' written notice, may redeem shares of the Series B Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends thereon to and including the date fixed for redemption (except as provided in Section 5(c) below), without interest. If less than all of the outstanding Series B Preferred Stock is to be redeemed, the Series B Preferred Stock to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable method determined by the Corporation.

(b) *Limitations on Redemption.* Unless full cumulative dividends on all shares of Series B Preferred Stock shall have been, or contemporaneously are, declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no shares of Series B Preferred Stock shall be redeemed unless all outstanding shares of Series B Preferred Stock are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series B Preferred Stock (except by exchange for capital stock of the Corporation ranking junior to the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation); provided, however, that the foregoing shall not prevent such action by the Board of Directors or its designees pursuant to Article VII in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes or the purchase or acquisition of shares of Series B Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series B Preferred Stock.

(c) *Rights to Dividends on Shares Called for Redemption.* Immediately prior to any redemption of Series B Preferred Stock, the Corporation shall pay, in cash, any accumulated and unpaid dividends to and including the redemption date, unless a redemption date falls after a Dividend Record Date and prior to the corresponding Dividend Payment Date, in which case each holder of Series B Preferred Stock at the close of business on such Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before such Dividend Payment Date. Except as provided above, the Corporation will make no

payment or allowance for unpaid dividends, whether or not in arrears, on Series B Preferred Stock which is redeemed.

(d) Procedures for Redemption.

(i) Notice of redemption will be mailed by the Corporation, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series B Preferred Stock to be redeemed at their respective addresses as they appear on the stock transfer records of the Corporation. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series B Preferred Stock except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which Series B Preferred Stock may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of shares of Series B Preferred Stock to be redeemed; (D) the place or places where the Series B Preferred Stock is to be surrendered for payment of the redemption price; and (E) that dividends on the shares to be redeemed will cease to accrue on such redemption date. If less than all of the Series B Preferred Stock held by any holder is to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series B Preferred Stock held by such holder to be redeemed.

(iii) If notice of redemption of any shares of Series B Preferred Stock has been given and if the funds necessary for such redemption have been set aside by the Corporation in trust for the benefit of the holders of any shares of Series B Preferred Stock so called for redemption, then, from and after the redemption date, dividends will cease to accrue on such shares of Series B Preferred Stock, such shares of Series B Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price. Holders of Series B Preferred Stock to be redeemed shall surrender such Series B Preferred Stock at the place designated in such notice and, upon surrender in accordance with said notice of the certificates for shares of Series B Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares of Series B Preferred Stock shall be redeemed by the Corporation at the redemption price plus any accrued and unpaid dividends payable upon such redemption. In case less than all the shares of Series B Preferred Stock represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares of Series B Preferred Stock without cost to the holder thereof.

(iv) The deposit of funds with a bank or trust corporation for the purpose of redeeming Series B Preferred Stock shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust corporation the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(B) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series B Preferred Stock entitled thereto at the expiration of two years from the applicable redemption dates shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(e) *Application of Article VII.* The shares of Series B Preferred Stock are subject to the provisions of Article VII of the Charter, including, without limitation, the provision for the redemption of shares transferred to the Trust (as defined in such Article). For this purpose, the market price of the Series B Preferred Stock shall equal \$25.00 per share, plus all accrued and unpaid dividends on the shares of Series B Preferred Stock.

(f) *Status of Redeemed Shares.* Any shares of Series B Preferred Stock that shall at any time have been redeemed or otherwise acquired by the Corporation shall, after such redemption or acquisition, have the status of authorized but unissued preferred stock, without designation as to series until such shares are once more classified and designated as part of a particular series by the Board of Directors.

(6) VOTING RIGHTS.

(a) Holders of the Series B Preferred Stock will not have any voting rights, except as set forth below.

(b) Whenever dividends on any shares of Series B Preferred Stock or any series of preferred stock ranking on parity as to payment of dividends with the Series B Preferred Stock shall be in arrears for six or more quarterly periods, whether or not consecutive (a "Preferred Dividend Default"), the holders of such shares of Series B Preferred Stock (voting separately as a class with any other classes or all other series of our preferred stock ranking on a parity with the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation ("Parity Preferred"), upon which like voting rights have been conferred and are exercisable), will be entitled to vote for the election of a total of two additional directors of the Corporation, provided that any such directors, if elected, shall not cause the Corporation to violate the requirement of Section 303A.02 of the New York Stock Exchange Listed Company Manual, or any successor provision thereto, that the Corporation have a majority of independent directors (the "Preferred Stock Directors"), and the number of directors on the Board of Directors shall increase by two, at a special meeting called by the holders of record of at least 20% of the Series B Preferred Stock or the holders of any other series of Parity Preferred so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders in which event such meeting shall be held at such next annual or special meeting of stockholders), and at each subsequent annual meeting until all dividends accumulated on such shares of Series B Preferred Stock and any series of preferred stock ranking on parity as to payment of dividends with the Series B Preferred Stock for the past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.

(c) If and when all accumulated dividends and the dividend for the then current dividend period on the Series B Preferred Stock and any series of preferred stock ranking on parity as to payment of dividends with the Series B Preferred Stock shall have

been paid in full or set aside for payment in full, the holders of shares of Series B Preferred Stock shall be divested of the voting rights set forth in Section 6(b) hereof (subject to revesting in the event of each and every subsequent Preferred Dividend Default) and, if all accumulated dividends and the dividend for the current dividend period have been paid in full or set aside for payment in full on all other series of Parity Preferred upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Stock Director so elected shall terminate and the number of directors on the Board of Directors shall decrease by two. Any Preferred Stock Director may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Series B Preferred Stock when they have the voting rights set forth in Section 6(b) (voting separately as a class with the Parity Preferred upon which like voting rights have been conferred and are exercisable). So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Stock Director may be filled by written consent of the Preferred Stock Director remaining in office, or, if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Series B Preferred Stock when they have the voting rights set forth in Section 6(b) (voting separately as a class with all other series of Parity Preferred upon which like voting rights have been conferred and are exercisable). The Preferred Stock Directors shall each be entitled to one vote per director on any matter.

(d) So long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of the Series B Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class with all series of Parity Preferred that the Corporation may issue upon which like voting rights have been conferred and are exercisable), (i) authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking prior to the Series B Preferred Stock with respect to payment of distributions and the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock of the Corporation into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; (ii) amend, alter or repeal any of the provisions of the Charter, so as to materially and adversely affect any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series B Preferred Stock or the holders thereof; provided, however, that any increase or decrease in the number of the authorized preferred stock (subject to the limit that the number of authorized shares of preferred stock shall not be decreased below the number issued and outstanding at such time), including the number of Series B Preferred Stock (subject to the limit that the number of authorized shares of Series B Preferred Stock shall not be decreased below the number issued and outstanding at such time), or the creation or issuance of any additional Series B Preferred Stock or other series of preferred stock that the Corporation may issue, or any increase in the amount of authorized shares of such series, in each case ranking on a parity with or junior to the Series B Preferred Stock that the Corporation may issue with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up, shall be deemed not to materially and adversely affect such preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption; or (iii) enter into, approve, or otherwise facilitate a binding share exchange or reclassification involving the Series B Preferred Stock that materially and adversely affects any of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms

or conditions of redemption of the Series B Preferred Stock or a consolidation, merger or similar transaction involving the Corporation unless in the case of a binding share exchange, reclassification, consolidation, merger or other similar transactions the shares of Series B Preferred Stock remain outstanding with preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption materially unchanged or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, the shares are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, in each case with preferences, conversion or other rights, voting powers, restrictions, limitation as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series B Preferred Stock that are not individually or in the aggregate materially less favorable to the holders of the Series B Preferred Stock than the preferences, conversion or other rights, voting powers, restrictions, limitation as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series B Preferred Stock as described herein.

(e) The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series B Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

(7) *CONVERSION*. The Series B Preferred Stock is not convertible into or exchangeable for any property or securities of the Corporation.

SECOND: The 7,500,000 shares of Series B Preferred Stock have been classified and designated by the Board of Directors under the authority contained in the Charter.

THIRD: These Articles Supplementary have been approved by the Board of Directors in the manner and by the vote required by law.

FOURTH: The undersigned President of the Corporation acknowledges these Articles Supplementary to be the corporate act of the Corporation and, as to all matters or facts required to be verified under oath, the undersigned Secretary and President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties of perjury.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused these Articles Supplementary to be signed in its name and on its behalf by its President and attested to by its Secretary on this 25 day of May, 2004.

ATTEST:

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ Ronald M. Morrison

By: /s/ William S. Ashmore

(SEAL)

Name: Ronald M. Morrison
Title: *Secretary*

Name: William S. Ashmore
Title: *President*

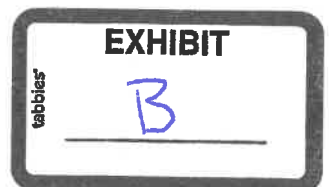
**IN THE CIRCUIT COURT
FOR BALTIMORE CITY, MARYLAND**

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

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 am the owner of 37,025 shares of the 9.375% Series B Cumulative Redeemable Preferred Stock issued by Impac Mortgage Holdings, Inc. I currently own all of the aforementioned shares.
3. I am a retired attorney who practiced in Florida for approximately 35 years, handling a wide variety of matters, but primarily tax and corporate cases. I have tried dozens of jury trials, mostly in federal court. I have also been a registered securities broker-dealer. In that capacity, I originated six public limited partnerships in which I was the co-general partner. I currently manage investment trusts for family members and others.
4. I have spent 12 years pursuing this matter against Impac Mortgage Holdings, Inc. I have made trips to California, New York, and Maryland for depositions and meetings with opposing counsel. This litigation has been extremely time consuming and complex and has required a high degree of skill.



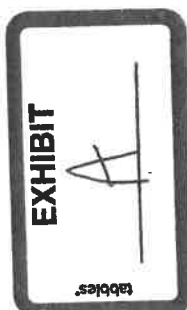
5. I did not keep time records detailing all my work on this case. To the best of my recollection, and after reviewing the case file, I believe I have worked on this litigation for approximately 4,300 hours.
6. I have also incurred expenses of \$14,036.69 related to my pursuant of this litigation. This figure does not include attorney's fees paid to the Costello Law Group who is assisting me with the final stages of this litigation. An itemized list of my litigation related expenses is attached hereto as Exhibit A.
7. I have obtained excellent results on behalf of myself and on behalf of the proposed class of Series B shareholders as this court, the Court of Special Appeals, and the Court of Appeals ruled in my favor on Counts I, IV, and VI. I am a well-respected attorney in my home state of Florida with a wealth of experience in litigation and corporate law.
8. I sold all common stock issued by Impac Mortgage Holdings, Inc. so as to eliminate any potential conflicts of interest in pursuing the class action litigation..
9. Camac is an opportunistic hedge fund operated by Eric Shahinian that first purchased Series B shares in September 2012, after I filed suit. Camac purchased the 9.375% Series B Cumulative Redeemable Preferred Stock issued by Impac Mortgage Holdings, Inc. at a price of approximately \$00.60 per share. Mr. Shahinian testified that my lawsuit caused him to buy the aforementioned shares.
10. Based upon Mr. Shahinian's deposition testimony and my understanding of the business model of Camac, it is my belief that Camac and/or Mr. Shahinian would be a poor class representative because either is not seeking full compensation for Series B Shareholders. Indeed, it appears that any sort of recovery would result in a massive return on investment for Camac versus the Series B Shareholders like myself who purchased the shares for full value and payment of dividends.

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: 12/17/21

Curtis J. Timm
Curtis J. Timm

<u>Date</u>	<u>Name</u>	<u>Category</u>	<u>Amount</u>
3/8/2010	FedEx Office	Mail	\$ 15.52
3/8/2010	FedEx Office	Mail/Materials	\$ 31.45
1/14/2011	Mail PAC N FAX	Mail/Materials	\$ 17.30
5/2/2011	301 Kwikie Inc.	Materials	\$ 73.42
8/3/2011	USPS	Mail/Materials	\$ 23.26
12/8/2011	Maryland Court Filing	Court Fees	\$ 155.00
3/12/2012	Clerk of Court Fees-Silverman	Court Fees	\$ 100.00
12/3/2012	Staples	Materials	\$ 15.50
12/11/2012	301 Kwikie Inc.	Materials	\$ 53.98
1/8/2014	Staples	Materials	\$ 25.67
1/28/2014	Southwest	Travel	\$ 257.00
1/29/2014	Marriott	Travel	\$ 173.84
1/29/2014	TPA Airport Parking	Parking	\$ 32.00
6/19/2014	USPS	Mail	\$ 19.99
6/30/2014	Gecko's	Meals	\$ 23.46
7/2/2014	USPS	Mail	\$ 3.50
7/17/2014	The Business Spot	Materials	\$ 15.54
7/25/2014	Costco	Materials	\$ 10.06
9/4/2014	Costco	Materials	\$ 20.12
9/18/2014	Southwest Airlines (ATL-BWI)	Travel	\$ 581.20
9/24/2014	Circle K Store 2305	Gas/Transportation	\$ 33.78
9/24/2014	ATL Airport Parking	Parking	\$ 32.00
9/25/2014	Yellow/Checker/Sun Cab	Transportation	\$ 33.00
9/25/2014	Rams Head	Meals	\$ 14.94
9/25/2014	DoubleTree-Colonade Baltimore	Travel	\$ 203.92
9/25/2014	The 1 Market #788	Gas/Transportation	\$ 43.31
10/9/2014	USPS	Mail	\$ 19.99
10/20/2014	USPS	Mail/Materials	\$ 2.45
12/9/2014	American Airlines	Travel	\$ 620.70
12/10/2014	Taxi Fare	Transportation	\$ 11.20
12/10/2014	United Airlines	Meals	\$ 8.99
12/11/2014	Scott's Restaurant & Bar	Meals	\$ 75.19
12/11/2014	1 Eats Burger	Meals	\$ 10.26
12/12/2014	Hotel Irvine (12/10-12/12)	Travel	\$ 579.66
12/13/2014	TPA Airport Parking	Parking	\$ 48.00
1/6/2015	JetBlue (#431 and #432)	Travel	\$ 277.98
1/13/2015	Taxi Fare	Transportation	\$ 30.63
1/14/2015	Taxi Fare	Transportation	\$ 38.63
1/14/2015	SRQ Bradenton-Intl Airport	Parking	\$ 14.00
1/14/2015	Taxi Fare	Transportation	\$ 22.00
1/14/2015	ONE UN New York	Travel	\$ 213.87
3/19/2015	Southwest Airlines	Travel	\$ 532.00
3/19/2015	Staples	Materials	\$ 13.15
3/19/2015	Southwest Airlines #8D4A9S	Travel	\$ 532.00
3/21/2015	Howtire-Sales Final	Travel	\$ 106.84



3/25/2015	SQ BWI Taxi 181	Transportation	\$ 40.00
3/25/2015	BWI Taxi Management	Transportation	\$ 42.00
3/25/2015	Sheraton Inner Harbor	Travel	\$ 23.13
3/25/2015	TGI Friday's #1930	Meals	\$ 22.12
3/26/2015	Sheraton Inner Harbor	Travel	\$ 23.13
3/26/2015	Taxi Fare	Transportation	\$ 35.00
3/26/2015	TPA Airport Parking	Parking	\$ 40.00
3/26/2015	FL Turnpike Toll	Tolls	\$ 1.25
3/27/2015	Yellow Transportation	Transportation	\$ 35.00
6/7/2015	SW Airlines 5262115998250	Travel	\$ 628.00
6/10/2015	Exxon Mobil 4220	Gas/Transportation	\$ 49.08
6/11/2015	Hilton Baltimore	Travel	\$ 119.55
6/11/2015	Kangaroo Express 3313	Gas/Transportation	\$ 42.73
6/11/2015	SuperShuttle	Transportation	\$ 16.00
6/11/2015	Long Horn Steakhouse	Meals	\$ 26.01
6/12/2015	Circle M	Gas/Transportation	\$ 19.81
6/12/2015	Hilton Baltimore	Travel	\$ 82.54
6/12/2015	Exxon Mobil 4791	Gas/Transportation	\$ 19.81
6/12/2015	ATL Airport Parking	Parking	\$ 32.00
6/12/2015	Zona Cocina	Meals	\$ 22.56
11/28/2016	Mail PAC N FAX	Mail/Materials	\$ 32.49
2/2/2017	Mail PAC N FAX	Mail	\$ 5.95
4/20/2017	Mail PAC N FAX	Mail/Materials	\$ 6.00
4/28/2017	Mail PAC N FAX	Mail/Materials	\$ 47.72
5/2/2017	Applebees	Meals	\$ 67.64
5/12/2017	Mail PAC N FAX	Mail/Materials	\$ 32.40
5/17/2017	Mail PAC N FAX	Mail/Materials	\$ 44.96
5/17/2017	Staples	Mail/Materials	\$ 13.69
5/19/2017	Stoneybrook G&CC	Meals	\$ 41.88
5/23/2017	Ruby Tuesday	Meals	\$ 38.00
6/29/2017	Old Edwards Inn	Meals	\$ 71.78
7/12/2017	Delta Airlines	Travel	\$ 168.20
7/12/2017	Delta Airlines	Travel	\$ 240.20
8/3/2017	USPS	Mail	\$ 8.34
8/3/2017	USPS	Mail/Materials	\$ 8.34
8/8/2017	The Business Spot	Mail/Materials	\$ 10.67
12/7/2017	Prime Steakhouse	Meals	\$ 78.00
12/12/2017	Gecko's	Meals	\$ 67.07
12/26/2017	Stoneybrook G&CC	Meals	\$ 41.72
1/17/2018	Prime Steakhouse	Meals	\$ 99.66
1/22/2018	Mattison's 41	Meals	\$ 74.00
1/25/2018	Staples	Materials	\$ 19.24
2/1/2018	Prime Steakhouse	Meals	\$ 77.27
2/12/2018	USPS	Mail/Materials	\$ 38.47
2/26/2018	USPS	Mail/Materials	\$ 41.57
3/1/2018	Applebees	Meals	\$ 54.49
3/15/2018	Prime Steakhouse	Meals	\$ 85.68

3/16/2018	Mail PAC N FAX	Mail/Materials	\$ 19.99
3/29/2018	USPS	Mail/Materials	\$ 26.88
4/10/2018	Summer House	Meals	\$ 148.40
4/16/2018	Chickfila	Meals	\$ 13.33
4/18/2018	Stoneybrook G&CC	Meals	\$ 30.35
5/3/2018	Bijou Café	Meals	\$ 46.12
5/4/2018	USPS 1184320302	Mail	\$ 7.15
5/18/2018	Applebees	Meals	\$ 13.54
6/12/2018	Business Spot	Mail/Materials	\$ 50.00
8/17/2018	Maryland Clerk of Court	Court Fees	\$ 121.00
8/20/2018	Business Spot	Mail/Materials	\$ 46.47
8/22/2018	Gas Station	Transportation	\$ 18.44
8/22/2018	Business Spot	Mail/Materials	\$ 46.80
8/23/2018	Miscellaneous	Materials	\$ 9.32
11/27/2018	Office Depot Office Max	Materials	\$ 51.55
6/13/2019	Staples	Mail/Materials	\$ 81.30
6/14/2019	Staples	Mail/Materials	\$ 81.30
6/19/2019	Staples	Mail/Materials	\$ 288.47
6/19/2019	Staples	Mail/Materials	\$ 271.21
6/19/2019	Staples	Mail/Materials	\$ 9.29
6/20/2019	USPS	Mail/Materials	\$ 7.35
6/20/2019	Staples	Mail/Materials	\$ 84.95
6/21/2019	Staples	Mail/Materials	\$ 84.95
6/21/2019	Staples	Mail/Materials	\$ 271.21
8/6/2019	The Business Spot	Mail/Materials	\$ 59.48
8/7/2019	The Business Spot	Mail/Materials	\$ 59.48
8/12/2019	USPS PO 3635920741	Mail	\$ 20.70
8/12/2019	The Business Spot	Mail/Materials	\$ 59.48
8/13/2019	The Business Spot	Mail/Materials	\$ 59.48
8/14/2019	The UPS Store 3923	Mail/Materials	\$ 420.07
8/22/2019	The Business Spot	Mail/Materials	\$ 7.47
8/22/2019	The Business Spot	Mail/Materials	\$ 59.48
8/27/2019	The Business Spot	Mail/Materials	\$ 59.48
9/14/2019	USPS PO 3635920741	Mail	\$ 104.16
9/16/2019	Dauntless Printing	Materials	\$ 217.77
9/18/2019	The Business Spot	Mail/Materials	\$ 59.48
9/18/2019	USPS PO 3635920741	Mail	\$ 27.85
9/22/2019	Crowne Plaza Hotel	Travel	\$ 95.59
9/23/2019	Hotwire	Travel	\$ 38.00
9/24/2019	Agent Fee	Travel	\$ 106.73
9/24/2019	Southwest	Travel	\$ 409.96
9/24/2019	Spirit	Travel	\$ 132.58
9/24/2019	Spirit	Travel	\$ 31.00
10/1/2019	Uncle Julios	Meals	\$ 68.00
10/1/2019	Payless Car Rental	Transportation	\$ 44.10
10/1/2019	Gas Alto Shell	Gas/Transportation	\$ 32.85
10/1/2019	Travel Insurance-Allianz Global	Travel	\$ 5.00

10/2/2019	Double T Diner	Meals	\$	24.53
10/2/2019	Navy Mem Std Park	Travel	\$	5.00
10/2/2019	Cantina Mamma Lucia	Meals	\$	23.38
10/2/2019	Racetrac	Meals	\$	25.26
10/2/2019	Shell Oil	Gas/Transportation	\$	15.31
10/3/2019	Mcdonald's	Meals	\$	10.38
10/3/2019	Potbelly	Meals	\$	8.46
10/4/2019	ABM Atlanta ARPRT	Travel	\$	20.00
10/4/2019	Spirit	Meals	\$	6.00
2/19/2020	USPS	Mail/Materials	\$	23.25
2/19/2020	Staples	Materials	\$	16.04
2/21/2020	Staples	Mail/Materials	\$	27.19
3/20/2020	Madfish Grill	Meals	\$	68.28
5/4/2020	Costs-Second Court, Maryland	Court Fees	\$	457.20
5/21/2020	Staples	Materials	\$	87.72
6/3/2020	Staples	Mail/Materials	\$	346.85
10/10/2020	USPS	Mail	\$	46.60
10/10/2020	Staples	Mail/Materials	\$	527.67
10/30/2020	Pub 32	Meals	\$	52.00
7/15/2021	Costs-Court of Appeals Maryland	Court Fees	\$	201.60
8/18/2021	The UPS Store #20	Mail	\$	25.97
8/18/2021	Office Depot Office Max	Materials	\$	2.70
8/18/2021	Office Depot Office Max	Materials	\$	1.15
8/18/2021	Office Depot Office Max	Materials	\$	5.14

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2021

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 1-14100

IMPAC MORTGAGE HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

33-0675505
(I.R.S. Employer
Identification No.)

19500 Jamboree Road, Irvine, California 92612
(Address of principal executive offices)

(949) 475-3600
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.01 par value	IMH	NYSE American
Preferred Stock Purchase Rights	IMH	NYSE American

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☒

Smaller reporting company ☒

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2) Yes ☐ No ☒

There were 21,332,684 shares of common stock outstanding as of November 5, 2021.

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PART I. FINANCIAL INFORMATION

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	September 30, 2021 (unaudited)	December 31, 2020
ASSETS		
Cash and cash equivalents	\$ 42,192	\$ 54,150
Restricted cash	5,812	5,602
Mortgage loans held-for-sale	275,544	164,422
Mortgage servicing rights	757	339
Securitized mortgage trust assets	1,727,736	2,103,269
Other assets	38,467	41,524
Total assets	<u>\$ 2,090,508</u>	<u>\$ 2,369,306</u>
LIABILITIES		
Warehouse borrowings	\$ 261,464	\$ 151,932
Convertible notes, net	20,000	20,000
Long-term debt	46,458	44,413
Securitized mortgage trust liabilities	1,707,494	2,086,557
Other liabilities	47,810	50,753
Total liabilities	<u>2,083,226</u>	<u>2,353,655</u>
Commitments and contingencies (See Note 11)		
STOCKHOLDERS' EQUITY		
Series A-1 junior participating preferred stock, \$0.01 par value; 2,500,000 shares authorized; none issued or outstanding	—	—
Series B 9.375% redeemable preferred stock, \$0.01 par value; liquidation value \$35,360; 2,000,000 shares authorized; 665,592 cumulative shares issued and outstanding as of September 30, 2021 and December 31, 2020 (See Note 12)	7	7
Series C 9.125% redeemable preferred stock, \$0.01 par value; liquidation value \$35,127; 5,500,000 shares authorized; 1,405,086 cumulative shares issued and outstanding as of September 30, 2021 and December 31, 2020 (See Note 12)	14	14
Common stock, \$0.01 par value; 200,000,000 shares authorized; 21,332,684 and 21,238,191 shares issued and outstanding as of September 30, 2021 and December 31, 2020, respectively	213	212
Additional paid-in capital	1,237,767	1,237,102
Accumulated other comprehensive earnings, net of tax	23,192	24,766
Total accumulated deficit:		
Cumulative dividends declared	(822,520)	(822,520)
Accumulated deficit	(431,391)	(423,930)
Total accumulated deficit	<u>(1,253,911)</u>	<u>(1,246,450)</u>
Total stockholders' equity	<u>7,282</u>	<u>15,651</u>
Total liabilities and stockholders' equity	<u>\$ 2,090,508</u>	<u>\$ 2,369,306</u>

See accompanying notes to unaudited consolidated financial statements

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Statement of Operations Items for the Nine Months Ended September 30, 2020:	Mortgage Lending	Real Estate Services	Long-term Portfolio	Corporate and other	Consolidated
Loss on sale of loans, net	\$ (7,451)	\$ —	\$ —	\$ —	\$ (7,451)
Servicing fees, net	3,733	—	—	—	3,733
Loss on mortgage servicing rights, net	(26,885)	—	—	—	(26,885)
Real estate services fees, net	—	1,018	—	—	1,018
Other revenue	135	—	107	1,253	1,495
Other operating expense	(44,591)	(1,120)	(486)	(15,152)	(61,349)
Other income (expense)	2,537	—	2,822	(1,825)	3,534
Net (loss) earnings before income tax expense	<u>\$ (72,522)</u>	<u>\$ (102)</u>	<u>\$ 2,443</u>	<u>\$ (15,724)</u>	<u>\$ (85,905)</u>
Income tax expense					55
Net loss					<u>\$ (85,960)</u>

Balance Sheet Items as of:	Mortgage Lending	Real Estate Services	Long-term Portfolio	Corporate and other	Consolidated
Total Assets at September 30, 2021 (1)	<u>\$ 332,440</u>	<u>\$ 503</u>	<u>\$ 1,727,918</u>	<u>\$ 29,647</u>	<u>\$ 2,090,508</u>
Total Assets at December 31, 2020 (1)	<u>\$ 233,841</u>	<u>\$ 503</u>	<u>\$ 2,103,399</u>	<u>\$ 31,563</u>	<u>\$ 2,369,306</u>

(1) All segment asset balances exclude intercompany balances.

Note 11.—Commitments and Contingencies

Legal Proceedings

The Company is a defendant in or a party to a number of legal actions or proceedings that arise in the ordinary course of business. In some of these actions and proceedings, claims for monetary damages are asserted against the Company. In view of the inherent difficulty of predicting the outcome of such legal actions and proceedings, the Company generally cannot predict what the eventual outcome of the pending matters will be, what the timing of the ultimate resolution of these matters will be, or what the eventual loss related to each pending matter may be, if any.

In accordance with applicable accounting guidance, the Company establishes an accrued liability for litigation when those matters present loss contingencies that are both probable and estimable. In any case, there may be an exposure to losses in excess of any such amounts whether accrued or not. Any estimated loss is subject to significant judgment and is based upon currently available information, a variety of assumptions, and known and unknown uncertainties. The matters underlying the estimated loss will change from time to time, and actual results may vary significantly from the current estimate. Therefore, an estimate of possible loss represents what the Company believes to be an estimate of possible loss only for certain matters meeting these criteria. It does not represent the Company's maximum loss exposure.

Based on the Company's current understanding of these pending legal actions and proceedings, management does not believe that judgments or settlements arising from pending or threatened legal matters, individually or in the aggregate, will have a material adverse effect on the consolidated financial position, operating results or cash flows of the Company. However, in light of the inherent uncertainties involved in these matters, some of which are beyond the Company's control, and the very large or indeterminate damages sought in some of these matters, an adverse outcome in one or more of these matters could be material to the Company's results of operations or cash flows for any particular reporting period.

The legal matter updates summarized below are ongoing and may have an effect on the Company's business and future financial condition and results of operations:

On December 7, 2011, a purported class action was filed in the Circuit Court of Baltimore City entitled Timm v. Impact Mortgage Holdings, Inc., et al. alleging on behalf of holders of the Company's 9.375% Series B Cumulative Redeemable Preferred Stock (Preferred B) and 9.125% Series C Cumulative Redeemable Preferred Stock (Preferred C) who did not tender their stock in connection with the Company's 2009 completion of its Offer to Purchase and Consent

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Solicitation that the Company failed to achieve the required consent of the Preferred B and C holders, the consents to amend the Preferred stock were not effective because they were given on unissued stock (after redemption), the Company tied the tender offer with a consent requirement that constituted an improper “vote buying” scheme, and that the tender offer was a breach of a fiduciary duty. The action sought the payment of two quarterly dividends for the Preferred B and C holders, the unwinding of the consents and reinstatement of the cumulative dividend on the Preferred B and C stock, and the election of two directors by the Preferred B and C holders. The action also sought punitive damages and legal expenses. On July 16, 2018, the Circuit Court entered a Judgment Order (“Judgment Order”) whereby it (1) declared and entered judgment in favor of all defendants on all claims related to the Preferred C holders and all claims against all individual defendants thereby affirming the validity of the 2009 amendments to the Preferred C Articles Supplementary; (2) declared its interpretation of the voting provision language in the Preferred B Articles Supplementary to mean that consent of two-thirds of the Preferred B stockholders was required to approve the 2009 amendments to the Preferred B Articles Supplementary, which consent was not obtained, thus rendering the amendments invalid and leaving the 2004 Preferred B Articles Supplementary in effect; (3) ordered the Company to hold a special election within sixty days for the Preferred B stockholders to elect two directors to the Board of Directors pursuant to the 2004 Preferred B Articles Supplementary (which Directors will remain on the Company’s Board of Directors until such time as all accumulated dividends on the Preferred B have been paid or set aside for payment); and (4) declared that the Company is required to pay three quarters of dividends on the Preferred B stock under the 2004 Preferred B Articles Supplementary (approximately, \$1.2 million, but did not order the Company to make any payment at that time). The Circuit Court declined to certify any class pending the outcome of appeals and certified its Judgment Order for immediate appeal. On October 2, 2019, the Court of Special Appeals held oral argument for all appeals in the matter. On April 1, 2020, the Court of Special Appeals issued an opinion affirming the judgment in favor of plaintiffs on the Series B voting rights finding that the voting rights provision was not ambiguous. In response, the Company filed a petition for a writ of certiorari to the Maryland Court of Appeals appealing the Court of Special Appeals opinion, which was granted on July 13, 2020. All parties submitted their briefs and oral argument was held on December 4, 2020. On July 15, 2021, the Maryland Court of Appeals affirmed the decision of the Circuit Court (and the Court of Special Appeals) in granting summary judgment in favor of the plaintiffs on the Preferred B voting rights and, although the Court of Appeals found the voting rights provision to be ambiguous, it concluded that the extrinsic evidence presented to the Circuit Court, which it found to be undisputed, supported the plaintiffs’ interpretation that the voting rights provision required separate voting by the Preferred B stockholders to amend the Preferred B Articles Supplementary. Accordingly, the 2009 amendments to the Preferred B Articles Supplementary were not validly adopted and the 2004 Preferred Articles Supplementary remain in effect. On August 17, 2021, the Court of Appeals issued its mandate returning the case to the Circuit Court for final proceedings. Thereafter, and in consideration of the Circuit Court’s outstanding Order, co-Plaintiff Camac Fund LP called upon the Company to hold a special meeting of the Preferred B stockholders for the election of two directors (“Special Meeting”) under the 2004 Preferred B Articles Supplementary. The Special Meeting was convened on October 13, 2021 and adjourned by a vote of all shares present to November 23, 2021 at 9:00 a.m. Pacific due to lack of a quorum sufficient for election of directors. On October 25, 2021, the case was assigned to a judge of the Circuit Court to oversee final disposition of outstanding issues.

On April 20, 2017, a purported class action was filed in the United States District Court, Central District of California, entitled *Nguyen v. Impac Mortgage Corp. dba CashCall Mortgage et al.* The plaintiffs contend the defendants did not pay purported class members overtime compensation or provide meal and rest breaks, as required by law. The action seeks to invalidate any waiver signed by a purported class member of their right to bring a class action and seeks damages, restitution, penalties, attorney’s fees, interest, and an injunction against unfair, deceptive, and unlawful activities. On August 23, 2018, the court (1) granted the defendants motion to compel arbitration as to all claims, except for the plaintiffs’ claims under California’s Labor Code Private Attorneys General Act (PAGA); (2) ordered the plaintiffs to submit their claims (other than PAGA claims) to arbitration on an individual, non-class, non-collective, and non-representative basis; (3) dismissed all class and collective claims with prejudice to the plaintiffs and without prejudice to putative class members; and (4) stayed all claims that were compelled to arbitration, as well as the PAGA claims. Plaintiffs Jason Nguyen and Tam Nguyen each submitted their respective demands for individual arbitration to the American Arbitration Association. The Company settled all individual claims brought by Jason Nguyen and Tam Nguyen and each of their arbitration claims were dismissed with prejudice on September 1, 2021.

On September 18, 2018, a purported class action was filed in the Superior Court of California, Orange County, entitled *McNair v. Impac Mortgage Corp. dba CashCall Mortgage*. The plaintiff contends the defendant did not pay the plaintiff and purported class members overtime compensation, provide required meal and rest breaks, or provide accurate wage statements. The action seeks damages, restitution, penalties, interest, attorney’s fees, and all other appropriate

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injunctive, declaratory, and equitable relief. On March 8, 2019, a First Amended Complaint was filed, which added a claim alleging PAGA violations. On March 12, 2019, the parties filed a stipulation with the court stating (1) the plaintiff's individual claims should be arbitrated pursuant to the parties' arbitration agreement, (2) the class claims should be struck from the First Amended Complaint, and (3) the plaintiff will proceed solely with regard to her PAGA claims. This case was consolidated with the Batres v. Impac Mortgage Corp. dba CashCall Mortgage case discussed below with a rescheduled trial date of January 18, 2022. On October 28, 2021, the Company entered into a settlement agreement, which is subject to court review and approval, to resolve all claims brought by Plaintiff McNair and the class members. No assurances can be given that such settlement will be approved by the court.

On December 27, 2018, a purported class action was filed in the Superior Court of California, Orange County, entitled Batres v. Impac Mortgage Corp. dba CashCall Mortgage. The plaintiff contends the defendant did not pay the plaintiff and purported class members overtime compensation, provide required meal and rest breaks, or provide accurate wage statements. The action seeks damages, restitution, penalties, interest, attorney's fees, and all other appropriate injunctive, declaratory, and equitable relief. On March 14, 2019, the plaintiff filed an amended complaint alleging only PAGA violations and seeking penalties, attorneys' fees, and such other appropriate relief. This case was consolidated with the McNair v. Impac Mortgage Corp. dba CashCall Mortgage discussed above with a rescheduled trial date of January 18, 2022. On October 28, 2021, the Company entered into a settlement agreement, which is subject to court review and approval, to resolve all claims brought by Plaintiff McNair and the class members. No assurances can be given that such settlement will be approved by the court.

On July 3, 2019, a representative action was filed in the Superior Court of California, Orange County, entitled Law v. Impac Mortgage Corp. dba CashCall Mortgage under PAGA. The plaintiff contends the defendant did not pay its employees overtime compensation, provide required meal and rest breaks, or provide accurate wage statements as required by law. The action seeks penalties, attorneys' fees, and such other appropriate relief. The Law action was deemed related to the McNair action on August 19, 2019. On January 13, 2020, the Law action was stayed pending resolution of the above-referenced McNair action.

The Company is a party to other litigation and claims which are in the course of the Company's operations. While the results of such other litigation and claims cannot be predicted with certainty, we believe the final outcome of such matters will not have a material adverse effect on our financial condition or results of operations. The Company believes that it has meritorious defenses to the claims and intends to defend these claims vigorously and as such the Company believes the final outcome of such matters will not have a material adverse effect on its financial condition or results of operations. Nevertheless, litigation is uncertain and the Company may not prevail in the lawsuits and can express no opinion as to their ultimate resolution. An adverse judgment in any of these matters could have a material adverse effect on the Company's financial position and results of operations.

Please refer to IMH's report on Form 10-K for the year ended December 31, 2020 for additional information regarding litigation and claims.

Repurchase Reserve

When the Company sells mortgage loans, it makes customary representations and warranties to the purchasers about various characteristics of each loan such as the origination and underwriting guidelines, including but not limited to the validity of the lien securing the loan, property eligibility, borrower credit, income and asset requirements, and compliance with applicable federal, state and local law. The Company's whole loan sale agreements generally require it to repurchase loans if the Company breached a representation or warranty given to the loan purchaser as well as refunds of premiums to investors for early payoffs on loans sold.

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The following table summarizes the repurchase reserve activity, within other liabilities on the consolidated balance sheets, related to previously sold loans for the nine months ended September 30, 2021 and year ended December 31, 2020:

	September 30, 2021	December 31, 2020
Beginning balance	\$ 7,054	\$ 8,969
(Reversal of) provision for repurchases (1)	(287)	5,227
Settlements	(1,903)	(7,142)
Total repurchase reserve	<u>\$ 4,864</u>	<u>\$ 7,054</u>

- (1) The (reversal of) provision for repurchases is included in gain (loss) on sale of loans, net in the accompanying consolidated statements of operations and comprehensive earnings (loss).

Corporate-owned Life Insurance Trusts

During the first quarter of 2020, there was a triggering event that caused the Company to reevaluate the consolidation of certain corporate-owned life insurance trusts. As a result, the Company has consolidated life insurance trusts for three former executive officers. The corporate-owned life insurance contracts are recorded at cash surrender value, which is provided by a third party and held within trusts. At September 30, 2021, the cash surrender value of the policies was \$10.8 million and were recorded within other assets on the consolidated balance sheets. At September 30, 2021, the liability associated with the corporate-owned life insurance trusts was \$12.9 million.

	At September 30, 2021			
Corporate-owned life insurance trusts:	Trust #1	Trust #2	Trust #3	Total
Corporate-owned life insurance cash surrender value	\$ 4,993	\$ 3,840	\$ 2,003	\$ 10,836
Corporate-owned life insurance liability	5,961	4,673	2,276	12,910
Corporate-owned life insurance shortfall (1)	<u>\$ (968)</u>	<u>\$ (833)</u>	<u>\$ (273)</u>	<u>\$ (2,074)</u>

- (1) The initial \$1.3 million of shortfall was recorded as a change in retained deficit at the time of the consolidation of the trusts. The additional shortfall was recognized in the accompanying consolidated statements of operations and comprehensive earnings (loss).

Commitments to Extend Credit

The Company enters into IRLCs with prospective borrowers whereby the Company commits to lend a certain loan amount under specific terms and interest rates to the borrower. These loan commitments are treated as derivatives and are carried at fair value. See Note 7. — Fair Value of Financial Instruments for more information.

Note 12.—Equity and Share Based Payments

Redeemable Preferred Stock

As discussed within Note 11.—Commitments and Contingencies, on July 15, 2021, the Maryland Court of Appeals affirmed the decision of the Circuit Court (and the Court of Special Appeals) in granting summary judgment in favor of the plaintiffs on the Preferred B voting rights and, although the Court of Appeals found the voting rights provision to be ambiguous, it concluded that the extrinsic evidence presented to the Circuit Court, which it found to be undisputed, supported the plaintiffs' interpretation that the voting rights provision required separate voting by the Preferred B stockholders to amend the Preferred B Articles Supplementary. Accordingly, the 2009 amendments to the Preferred B Articles Supplementary were not validly adopted and the 2004 Preferred Articles Supplementary remain in effect.

At September 30, 2021, the Company had \$70.5 million in outstanding liquidation preference of Series B and Series C Preferred Stock, inclusive of cumulative undeclared dividends in arrears. The holders of each series of Preferred

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Stock, which are non-voting and redeemable at the option of the Company, retain the right to a \$25.00 per share liquidation preference, plus accrued and unpaid dividend, in the event of a liquidation of the Company and the right to receive dividends on the Preferred Stock if any such dividends are declared.

As a result, as of September 30, 2021, the Company has cumulative undeclared dividends in arrears of approximately \$18.7 million, or approximately \$28.13 per outstanding share of Preferred B, thereby increasing the liquidation value to approximately \$53.13 per share. Additionally, every quarter the cumulative undeclared dividends in arrears will increase by \$0.5859 per Preferred B share, or approximately \$390 thousand. The liquidation preference, inclusive of Preferred B cumulative undeclared dividends in arrears, is only payable upon declaration by the Board of Directors, settlement, voluntary or involuntary liquidation, dissolution or winding up of the Company's affairs. In addition, once the Circuit Court determines basis for an appropriate record date, the Company will be required to pay the three quarters of dividends on the Preferred B stock under the 2004 Preferred B Articles Supplementary (approximately \$1.2 million, which had been previously accrued for.) Co-Plaintiff Camac Fund LP called for a special meeting of the Preferred B stockholders for the election of two additional directors, which was convened on October 13, 2021, and adjourned by a vote of all shares present to November 23, 2021 at 9:00 a.m. Pacific due to lack of a quorum sufficient for election of directors.

Common and preferred dividends are included in the reconciliation of earnings per share beginning July 15, 2021, which was the date the Maryland Court of Appeals affirmed the decision in granting summary judgment in favor of the plaintiffs on the Preferred B voting rights. Cumulative preferred dividends, whether or not declared, are reflected in basic and diluted earnings per share in accordance with AC 260-10-45-11, despite not being accrued for on the consolidated balance sheets.

Share Based Payments

The following table summarizes activity, pricing and other information for the Company's stock options for the nine months ended September 30, 2021:

	Number of Shares	Weighted- Average Exercise Price
Options outstanding at the beginning of the year	524,357	\$ 8.58
Options granted	85,154	3.29
Options exercised	—	—
Options forfeited/cancelled	(32,950)	7.86
Options outstanding at the end of the period	576,561	7.84
Options exercisable at the end of the period	408,028	\$ 9.63

As of September 30, 2021, there was approximately \$168 thousand of total unrecognized compensation cost related to stock option compensation arrangements granted under the plan, net of estimated forfeitures. That cost is expected to be recognized over the remaining weighted average period of 1.5 years.

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The following table summarizes activity, pricing and other information for the Company's RSU's for the nine months ended September 30, 2021:

	Number of Shares	Weighted- Average Grant Date Fair Value
RSU's outstanding at beginning of the year	267,221	\$ 5.04
RSU's granted	245,332	3.29
RSU's issued	(94,493)	4.78
RSU's forfeited/cancelled	(20,231)	3.29
RSU's outstanding at end of the period	<u>397,829</u>	<u>\$ 4.11</u>

As of September 30, 2021, there was approximately \$1.2 million of total unrecognized compensation cost related to the RSU compensation arrangements granted under the plan. That cost is expected to be recognized over the remaining weighted average period of 1.9 years.

The following table summarizes activity, pricing and other information for the Company's DSU's for the nine months ended September 30, 2021:

	Number of Shares	Weighted- Average Grant Date Fair Value
DSU's outstanding at the beginning of the year	54,500	\$ 6.61
DSU's granted	—	—
DSU's issued	—	—
DSU's forfeited/cancelled	—	—
DSU's outstanding at the end of the period	<u>54,500</u>	<u>\$ 6.61</u>

As of September 30, 2021, there was approximately \$15 thousand of total unrecognized compensation cost related to the DSU compensation arrangements granted under the plan. That cost is expected to be recognized over the remaining weighted average period of 0.4 years.

Note 13.—Subsequent Events

Subsequent events have been evaluated through the date of this filing.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

IMPAC MORTGAGE HOLDINGS, INC.

/s/ GEORGE MANGIARACINA

George Mangiaracina

Chief Executive Officer

November 12, 2021

/s/ JON GLOECKNER

Jon Gloeckner

SVP, Treasury & Financial Reporting

(Interim Principal Financial Officer and Principal Accounting Officer)

November 12, 2021

IN THE CIRCUIT COURT FOR BALTIMORE CITY

-----x
CURTIS J. TIMM and CAMAC FUND, LP On
Behalf of themselves and all persons
Similarly situated,

Plaintiffs,

Case Number
24-C-11-008391

-against-

IMPAC MORTGAGE HOLDINGS, INC.,
Defendant.

-----x

January 14, 2015
9:30 a.m.

Deposition of CURTIS TIMM, taken by
Defendant, pursuant to Notice, at the offices of
Pepper Hamilton, LLP, 620 Eighth Avenue, New
York, New York, before TAMMEY M. PASTOR, a
Registered Professional Reporter, Certified
LiveNote Reporter and Notary Public within and
for the State of New York.

<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 TYDINGS & ROSENBERG, LLP 4 Attorneys for Plaintiff Camac Fund 5 100 East Pratt Street, 26th Floor 6 Baltimore, Maryland 21202 7 BY: DANIEL S. KATZ, ESQ. 8 (Dkatz@tydingslaw.com) 9 10 GOLDMAN & MINTON, P.C. 11 Attorneys for Plaintiff Curtis Timm 12 1500 Union Avenue, Suite 2300 13 Baltimore, Maryland 21211 14 BY: THOMAS J. MINTON, ESQ. 15 (Tminton@charmcitylegal.com) 16 17 PEPPER HAMILTON, LLP 18 Attorneys for Defendant, Impac Mortgage 19 350 South Grand Avenue 20 Two California Plaza, Suite 3400 21 Los Angeles, CA, 90071 22 BY: 23 PAMELA S. PALMER, ESQ. 24 (Palmerp@pepperlaw.com) 25 -and- KEVIN A. CRISP, ESQ. (Crispk@pepperlaw.com)</p> <p>ALSO PRESENT: ERIC SHAHINIAN</p>	<p style="text-align: right;">Page 4</p> <p>1 CURTIS TIMM 2 A. I will. 3 Q. Let's start with your 4 background. Will you tell me your 5 educational background. 6 A. I graduated from the University 7 of Minnesota Law School in June 1954. 8 Q. Did you take any college, get 9 any college degrees after law school in '54? 10 A. No. 11 Q. Did you begin practicing law 12 after law school? 13 A. For the first two years I was 14 in the U.S. Air Force. And I was a member of 15 the Judge Advocate General, the legal side 16 of the Air Force. 17 Q. So was that until about 1956? 18 A. Two years. 19 Q. Then after you served as a 20 lawyer for the Air Force, what was your next 21 professional position? 22 A. I was employed by Wheeler & 23 Fredrikson. F-R-E-D-R-I-K-S-O-N. Kind of a 24 specialty firm in Minneapolis. 25 Q. What kind of law did you</p>
<p style="text-align: right;">Page 3</p> <p>1 CURTIS TIMM 2 CURTIS TIMM, 3 having been first duly sworn by the 4 Notary Public (Tammey M. Pastor), was 5 examined and testified as follows: 6 EXAMINATION CONDUCTED BY 7 MS. PALMER: 8 Q. Good morning, Mr. Timm. You've 9 attended a number of these depositions and 10 heard your attorney's admonishments to the 11 witnesses on any number of times. So I am 12 not going to repeat all that. 13 Would you just start by stating 14 your name for the record. 15 A. Curtis J. as in John, Timm, 16 T-I-M-M. 17 Q. Is there any reason that as a 18 matter of health or medication you would be 19 unable to give testimony to the best of your 20 recollection today? 21 A. No. 22 Q. Will you please let me know if 23 any of my questions are unclear to you. If 24 you answer a question I am going to assume 25 you understood the question.</p>	<p style="text-align: right;">Page 5</p> <p>1 CURTIS TIMM 2 practice there? 3 A. I was the trial part of a 12 4 man firm that specialized in tax, corporate 5 mergers, lawyer's lawyers. 6 Q. How long were you with the 7 Wheeler firm? 8 A. A little less than two years. 9 Q. So until about 1958? 10 A. 1958. 11 Q. Then what was your next 12 professional move? 13 A. I moved to Florida and was 14 employed by a firm by the name of Icard and 15 Merrill. 16 Q. What did you practice there? 17 A. What did I practice? 18 Q. What was the nature of your 19 practice at that firm? 20 A. Pretty much everything. When 21 the real estate business was good we did 22 everything from condominiums, etc. When it 23 was bad we did foreclosures and debt 24 collection and everything. 25 Q. Was your practice at that firm</p>

2 (Pages 2 to 5)

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<p style="text-align: right;">Page 6</p> <p>1 CURTIS TIMM</p> <p>2 primarily transactional as opposed to</p> <p>3 litigation?</p> <p>4 A. Mine was primarily tax and</p> <p>5 corporate. I handled a lot of mergers and</p> <p>6 acquisition and specialized in that general</p> <p>7 area. But rare among attorneys, I felt you</p> <p>8 could not be a good office attorney unless</p> <p>9 you could go into court and try cases.</p> <p>10 So over the years I have always</p> <p>11 tried at least one, possibly two jury cases.</p> <p>12 In the last few years almost all of them</p> <p>13 were in Federal Court.</p> <p>14 Q. How long were you with this</p> <p>15 firm in Florida?</p> <p>16 A. Since 1958.</p> <p>17 Q. And how long did you stay with</p> <p>18 them?</p> <p>19 A. Well, I retired after about 35</p> <p>20 years of practice in 1989, '90 era. The firm</p> <p>21 ended up being Icard Merrill Curtis,</p> <p>22 C-U-L-L-I-S, Timm, Furen, F-U-R-E-N and</p> <p>23 Ginsberg.</p> <p>24 Q. Any relation to Ruth Bader?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 8</p> <p>1 CURTIS TIMM</p> <p>2 cities and area. I finally sold out the</p> <p>3 biggest amounts in 1983, '84 era area.</p> <p>4 Then I decided that I had to</p> <p>5 learn the securities business and investment</p> <p>6 in the markets. So I got an office for my</p> <p>7 own purposes only in brokerage firms. I</p> <p>8 wanted to be associated with people who</p> <p>9 traded the market and who had ideas. And</p> <p>10 that I could learn how to trade and invest</p> <p>11 money, because I had some money, but it was</p> <p>12 all cash.</p> <p>13 I had decided that at that time</p> <p>14 it wasn't that good to re-enter the real</p> <p>15 estate market.</p> <p>16 Q. So having an office with these</p> <p>17 brokerage firms, did you work for the</p> <p>18 brokerage firms?</p> <p>19 A. No. No. I just rented a place</p> <p>20 so that I could have a place to go. And my</p> <p>21 wife was happy to have me leave the house</p> <p>22 every day.</p> <p>23 Q. I understand that, risk of</p> <p>24 retirement. When you were engaged in</p> <p>25 learning the investment business, did you</p>
<p style="text-align: right;">Page 7</p> <p>1 CURTIS TIMM</p> <p>2 Q. So retired in 1990 after 35</p> <p>3 years of practice.</p> <p>4 A. Correct.</p> <p>5 Q. After you retired did you give</p> <p>6 up practicing as a lawyer?</p> <p>7 A. Yes. Because I was actually</p> <p>8 about less than 60 years old and didn't want</p> <p>9 to have to practice for prior clients that I</p> <p>10 represented for 20, 30 years, I voluntarily</p> <p>11 agreed to a non-compete agreement, which is</p> <p>12 the best thing I ever did.</p> <p>13 When people came to me and said</p> <p>14 you've been our attorney for 20 years, why</p> <p>15 can't you do this? I'd say no, I can't, I</p> <p>16 have a non-compete agreement.</p> <p>17 Q. How did you occupy your time</p> <p>18 after you retired in any professional</p> <p>19 capacity?</p> <p>20 A. Having moved to Florida in its</p> <p>21 infancy of its present growth, it wasn't</p> <p>22 easy to not realize that real estate was the</p> <p>23 thing to be in as an investor.</p> <p>24 So for years I bought into</p> <p>25 vacant real estate on the edge of growing</p>	<p style="text-align: right;">Page 9</p> <p>1 CURTIS TIMM</p> <p>2 manage your own?</p> <p>3 A. Yes.</p> <p>4 Q. Were they stock and bond</p> <p>5 investments?</p> <p>6 A. Yes.</p> <p>7 Q. This is starting in about 190?</p> <p>8 A. Correct.</p> <p>9 Q. Did you ever manage anybody</p> <p>10 else's investments other than your own?</p> <p>11 A. I had a lot of opportunities</p> <p>12 because even in the last ten years or so, I</p> <p>13 would attempt to predict everything from the</p> <p>14 Dow, interest rates and other things.</p> <p>15 So my long-range predictions</p> <p>16 were pretty decent. My short range timing</p> <p>17 was subject to some question.</p> <p>18 Q. Did you publish your</p> <p>19 predictions?</p> <p>20 A. I had a group of about eight or</p> <p>21 ten people that I sent my ideas to</p> <p>22 throughout the United States. I had a fellow</p> <p>23 in Boston who published a periodical or a</p> <p>24 monthly newsletter called Inference and</p> <p>25 which cost 16,000 a year to take.</p>

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CURTIS TIMM

So I had people like that. I had a fellow that, I came out of Minneapolis and my best friend was a big builder in Minneapolis and a thinker. I had half a dozen people I sent these papers to. If they wouldn't -- I finally cut off the fellow in Boston because all he would do is absorb my ideas. I said the reason I send them to you, I know what my ideas are, the reason I send them to you because I want your response. Why else would I send them to you.

Anyway, yes, to a select group.

Q. Coming back to my question, in addition to managing your own investments, after 1990, did you manage anyone else's investments?

A. I am Trustee of two trusts. One was a woman that just got me to promise to handle her trust. The other was my best friend in Minneapolis. Then I have two small family trusts, but although I am not a Trustee, I totally manage them.

Q. Do you buy stocks and bonds for the two trusts that you mentioned, the

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CURTIS TIMM

woman's and your friends -- do you buy stocks and bonds for those trusts?

A. Yes.

Q. Do you currently continue to do that?

A. I'm currently doing that.

Q. Then for your family trust you also buy stocks and bonds?

A. Yes.

Q. Other than those four trusts, are there any other investors for whom you buy and sell?

A. Not outside investors, no.

Q. In this deposition I will be talking or referring to your investments. And to have common language, what do you think of as your investments, you, Curtis Timm? Would we call it portfolio --

A. The type of investments or what?

Q. No. I want to of that your investments, your portfolio as opposed to other people's investments. Curtis Timm's portfolio?

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CURTIS TIMM

A. In Curtis Timm's portfolio there would be stocks that I would not put into a conservative investment trust for an older woman.

I don't know if it was covered or I missed it, but I also, I also as Curtis J. Timm Incorporated was an NASD broker/dealer.

Q. I was going to ask you about that. Is Curtis J. Timm, Inc. still registered as a broker/dealer?

A. No, it is not.

Q. What happened with that business?

A. I came from a family that was interested in oil. My father was, despite living in Minneapolis, a, "oil promoter," unquote, who sold investments in oil and gas ventures in Kansas and Oklahoma, mainly.

My brother was a petroleum engineer. At one time we considered going into business as a family. But my father died off early. And I diverted into law. But I always was interested in oil. I made my

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CURTIS TIMM

first oil and gas investment in 1970.

Q. So, did the Curtis J. Timm, Inc. business --

A. Let me finish it.

Q. Sorry.

A. After a number of years, particularly in situations where companies were acquired by other people, it got pretty routine, I could almost estimate how long the original people would stay with the acquiring company. And although the people you've met were intensely interested, and it was exciting and it was a pleasure to do this kind of work, it got repetitive.

So, I saw an opportunity in oil and gas drilling. So I formed -- well in order to do this, I formed six limited partnerships in which I was the co-general partner with my geologist who I required to be not incorporated and have all his assets exposed to potential liability. I did this because I said I didn't ever want to find out we have an accident we're not insured or something is not covered.

<p style="text-align: right;">Page 22</p> <p>1 CURTIS TIMM</p> <p>2 copy of the Prospectus.</p> <p>3 Q. Do you recall if you read the</p> <p>4 Impac Prospectus for its common stock before</p> <p>5 purchasing the common?</p> <p>6 A. I have no recollection of doing</p> <p>7 that. They had been in business a number of</p> <p>8 years by that time.</p> <p>9 Q. At some point -- are you</p> <p>10 currently invested in Impac common stock?</p> <p>11 A. No.</p> <p>12 Q. When did you sell your Impac</p> <p>13 common?</p> <p>14 A. I decided that I shouldn't own</p> <p>15 it representing the preferred shareholders</p> <p>16 after this litigation was underway. So I</p> <p>17 liquidated. I just have a small amount of</p> <p>18 common at this time.</p> <p>19 Basically when I saw what Impac</p> <p>20 did, which was very smart, and that was in</p> <p>21 early 2007 or end of 2006 Impac withdrew</p> <p>22 from the mortgage origination business and</p> <p>23 they discharged about a thousand some</p> <p>24 employees.</p> <p>25 Well, I was invested in them</p>	<p style="text-align: right;">Page 24</p> <p>1 CURTIS TIMM</p> <p>2 the common in case there would be some press</p> <p>3 releases or something that would affect the</p> <p>4 preferred. Then I realized that no, there</p> <p>5 never would be.</p> <p>6 Q. When did you first purchase</p> <p>7 Impac preferred stock?</p> <p>8 A. I can't tell you the exact</p> <p>9 dates, I have answered it in the</p> <p>10 interrogatories. I went back and, you know,</p> <p>11 tracked when I purchased it.</p> <p>12 Q. We should go ahead and mark</p> <p>13 those interrogatories, I am glad you</p> <p>14 referred to them. I think it would be</p> <p>15 helpful to use those to ask you some</p> <p>16 questions.</p> <p>17 We will mark this as Timm</p> <p>18 Exhibit 1. These are Mr. Timm's answers --</p> <p>19 first set, answers to the first set of</p> <p>20 interrogatories.</p> <p>21 (Timm Deposition Exhibit</p> <p>22 1 for identification, Plaintiff's Curtis</p> <p>23 J. Timm's Answers to Defendant Impac</p> <p>24 Holdings Inc.'s First Set of</p> <p>25 Interrogatories, no production numbers.)</p>
<p style="text-align: right;">Page 23</p> <p>1 CURTIS TIMM</p> <p>2 because of their REIT earnings. And if they</p> <p>3 had gone out of business and stopped</p> <p>4 originating mortgages, obviously they</p> <p>5 wouldn't have any income from that source.</p> <p>6 So why should I continue as a common stock</p> <p>7 holder. I elected not to.</p> <p>8 Q. So you sold most of your Impac</p> <p>9 common stock in 2007 or thereabouts when</p> <p>10 Impac --</p> <p>11 A. Before, yes.</p> <p>12 Q. -- began --</p> <p>13 A. Yes.</p> <p>14 Q. Let me just finish my question.</p> <p>15 Sometimes my question comes out a little</p> <p>16 slowly.</p> <p>17 So you sold most of your Impac</p> <p>18 common stock in 2007 or thereabouts when</p> <p>19 Impac stopped originating mortgages?</p> <p>20 A. Correct.</p> <p>21 Q. Then sold the balance of your</p> <p>22 common stock after you filed this lawsuit in</p> <p>23 December 2011?</p> <p>24 A. It was very small. Just a few</p> <p>25 shares. I retained, to be honest, I retained</p>	<p style="text-align: right;">Page 25</p> <p>1 CURTIS TIMM</p> <p>2 BY MS. PALMER:</p> <p>3 Q. Mr. Timm, you can feel free to</p> <p>4 look at your answers to interrogatories</p> <p>5 there. It is set number 1. If you flip to</p> <p>6 page 4, this is your answer to questions</p> <p>7 about your trading in Impac Preferred B and</p> <p>8 C stock.</p> <p>9 As you just testified, it</p> <p>10 states here that you switched mostly to</p> <p>11 preferred shares when Impac dropped its</p> <p>12 mortgage origination business in or about</p> <p>13 early 2007.</p> <p>14 Does that refresh your</p> <p>15 recollection you started purchasing Impac</p> <p>16 preferred in or about early 2007?</p> <p>17 A. Yes. That's what I previously</p> <p>18 testified to.</p> <p>19 Q. Did you purchase B and C or one</p> <p>20 way or the other, do you recall?</p> <p>21 A. No. Did you say B and C MFA?</p> <p>22 Q. No.</p> <p>23 MR. MINTON: She means both B and</p> <p>24 C.</p> <p>25 Q. No. Let me rephrase the</p>

7 (Pages 22 to 25)

1 CURTIS TIMM
 2 **deposed as an expert? What was your**
 3 **expertise?**
 4 A. Tax and corporate.
 5 **Q. What do you mean by corporate?**
 6 A. Well, I once handled a merger
 7 and acquisition with one of the ten largest
 8 non-financial companies in the world. I have
 9 been involved in public offerings.
 10 I was involved in the formation
 11 of U.S. Home which after formation was the
 12 largest home builder in the United States.
 13 So I have been around the block
 14 in this area.
 15 **Q. You say you were deposed as an**
 16 **expert with respect to your corporate**
 17 **expertise?**
 18 A. I vaguely remember something
 19 like that. I am trying to think have I ever
 20 had my deposition taken? Basically the
 21 answer is no.
 22 **Q. In your professional career did**
 23 **you ever have occasion to represent a client**
 24 **in connection with exit consent?**
 25 A. No.

1 CURTIS TIMM
 2 **Q. Do you know what -- what does**
 3 **exit consent mean to you?**
 4 MR. MINTON: Objection.
 5 A. Well, it means when you sell
 6 your stock you also ask the exiting selling
 7 shareholder to consent to amendments.
 8 **Q. That is what Impac did in 2009**
 9 **with its preferred stock?**
 10 A. This is what they attempted,
 11 yes.
 12 **Q. Did you read Judge Pierson's**
 13 **decision in January 2013 on Impac's motion**
 14 **to dismiss this case?**
 15 A. Of course.
 16 **Q. And did you read the summary**
 17 **judgment motion that Impac filed about a**
 18 **year ago?**
 19 A. Yes.
 20 **Q. What is your understanding of**
 21 **the remaining claim in this case, what is**
 22 **it?**
 23 MR. MINTON: Objection. Go ahead.
 24 A. The basic issue is on the
 25 summary judgment whether in order to amend

1 CURTIS TIMM
 2 Preferred B, Impac would have to have
 3 received consents to that amendment, legal
 4 consents from two-thirds or more of the
 5 Preferred B shareholders.
 6 **Q. Have you had discussions with**
 7 **anyone at Impac about that subject?**
 8 A. Yes.
 9 **Q. Who have you discussed that**
 10 **subject with at Impac?**
 11 A. When I got the tender offer
 12 dated May 29, 2009 and read it, I thought it
 13 was so low and so ridiculous that no one
 14 would consent to it. That it would just be a
 15 preliminary offer that Impac would come back
 16 with a larger, more significant and more
 17 appropriate offer.
 18 So I was quite amazed that,
 19 number one, allegedly 67 percent plus agreed
 20 to tender their stock and that Impac could
 21 file amendments which I thought they had not
 22 received a single consent to.
 23 So I kept this thing on my desk
 24 for a couple weeks. I knew there was
 25 something wrong. I couldn't, despite all of

1 CURTIS TIMM
 2 my experience, put my finger on it. And I
 3 finally put my finger on it a couple weeks
 4 later.
 5 **Q. What did you put your finger**
 6 **on?**
 7 A. That they did not receive the
 8 necessary two-thirds consent from the
 9 Preferred B shareholders because they didn't
 10 buy or couldn't buy two-thirds of the
 11 Preferred B shares.
 12 And that the letter of
 13 transmittal agreement prepared by Impac's
 14 attorneys at their direction specifically
 15 required the purchase of the tendered shares
 16 before the depository would be authorized to
 17 consent to the amendments on behalf of the
 18 selling shareholders.
 19 It dawned on me that that's a
 20 fatal flaw, it's impossible after the shares
 21 have been sold, because you are no longer a
 22 shareholder. To consent to amendments.
 23 **Q. You understand that that issue**
 24 **of, that you've just described was dismissed**
 25 **by the Judge --**

<p style="text-align: right;">Page 38</p> <p>1 CURTIS TIMM</p> <p>2 MR. MINTON: Objection.</p> <p>3 Q. -- the claim based on that</p> <p>4 issue?</p> <p>5 MR. MINTON: Objection. The</p> <p>6 opinion speaks for itself.</p> <p>7 A. For some reason Judge Pierson</p> <p>8 seems to believe the number of shares, the</p> <p>9 number of consents that Impac actually</p> <p>10 received, I am emphasizing actually</p> <p>11 received, was more than two-thirds of the</p> <p>12 preferred shareholders.</p> <p>13 And that any evidence that</p> <p>14 would disprove this is, according to Judge</p> <p>15 Pierson, quote, irrelevant. Which I don't</p> <p>16 accept at all. It is the most relevant</p> <p>17 evidence in the whole case.</p> <p>18 Q. I understand your position.</p> <p>19 What I was getting at is that the claim that</p> <p>20 is before -- that is pending now is limited</p> <p>21 to the question that, of whether Impac</p> <p>22 obtained sufficient B shares to amend the</p> <p>23 Series B charter; is that your</p> <p>24 understanding?</p> <p>25 MR. MINTON: Objection, asked and</p>	<p style="text-align: right;">Page 40</p> <p>1 CURTIS TIMM</p> <p>2 personal and confidential and I don't care</p> <p>3 how many times you ask me that question I</p> <p>4 will only disclose this to Mr. Tompkinson or</p> <p>5 Mr. Ashmore personally.</p> <p>6 I finally told Ashmore's</p> <p>7 secretary this will be the most important</p> <p>8 call he will have received in years. So Mr.</p> <p>9 Ashmore called me then.</p> <p>10 Q. Can you place the approximate</p> <p>11 time frame in which you had the phone</p> <p>12 conversation with Mr. Ashmore?</p> <p>13 A. I first had a relatively long</p> <p>14 telephone conversation with Mr. Ashmore in</p> <p>15 November.</p> <p>16 Q. Of 2009?</p> <p>17 A. 2009.</p> <p>18 Q. What do you recall of that</p> <p>19 conversation, what did you say to him?</p> <p>20 A. I told him that the amendments</p> <p>21 that Impac filed were invalid, they were not</p> <p>22 properly approved in accordance with the</p> <p>23 Article Supplementary. And that this was</p> <p>24 because they didn't receive two-thirds or</p> <p>25 more consent from the effective</p>
<p style="text-align: right;">Page 39</p> <p>1 CURTIS TIMM</p> <p>2 answered.</p> <p>3 A. No. No. You say obtained the</p> <p>4 necessary B shares. It's obtained the</p> <p>5 necessary consent to the amendments to the B</p> <p>6 shares.</p> <p>7 Q. Absolutely. Good correction.</p> <p>8 That's the remaining issue; correct?</p> <p>9 A. Basically, yes.</p> <p>10 Q. Have you had any conversations</p> <p>11 with anyone at Impac regarding whether Impac</p> <p>12 obtained sufficient consent of the B holders</p> <p>13 to amend the charter in 2009?</p> <p>14 A. Yes. I waited until Impac filed</p> <p>15 two Form 10-Qs, quarterly reports. The June</p> <p>16 30 quarter and the September 30 quarter</p> <p>17 thinking that perhaps Impac would say this</p> <p>18 was a mistake, a typographical error, or the</p> <p>19 figures were wrong.</p> <p>20 When that didn't develop, I</p> <p>21 called either Tompkinson, I tried to call</p> <p>22 either Tompkinson or Ashmore. I couldn't get</p> <p>23 through for days or weeks because their</p> <p>24 attorneys would say what is this about?</p> <p>25 My response would be this is</p>	<p style="text-align: right;">Page 41</p> <p>1 CURTIS TIMM</p> <p>2 shareholders. And that in fact I knew they</p> <p>3 had not received a single consent either</p> <p>4 Preferred B or Preferred C shares.</p> <p>5 Q. What did you tell him was the</p> <p>6 basis for your information that fewer than</p> <p>7 two-thirds of the shareholders voted or</p> <p>8 consented? Did you tell him the basis for</p> <p>9 that view?</p> <p>10 MR. MINTON: Objection, lacks</p> <p>11 foundation.</p> <p>12 A. I first pointed to their</p> <p>13 balance sheet statements in the 10-Qs. By</p> <p>14 this time I had read the Letter Agreement --</p> <p>15 well, let me use the full name. The Letter</p> <p>16 of Transmittal and Consent Agreement that</p> <p>17 each tendering shareholder was required to</p> <p>18 sign was the transaction document that</p> <p>19 outlined the terms and conditions upon which</p> <p>20 the preferred shareholders tendered their</p> <p>21 shares.</p> <p>22 So I knew Impac, having</p> <p>23 prepared that Letter Agreement and having</p> <p>24 used the same language that was also in the</p> <p>25 Offering Circular, that it was impossible</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 CURTIS TIMM</p> <p>2 for Impac to have received written consent</p> <p>3 to either the Preferred B or Preferred C</p> <p>4 shareholders before they purchased all</p> <p>5 tendered stock on June 29, 2009.</p> <p>6 The reason it was impossible</p> <p>7 was they had already purchased all Preferred</p> <p>8 B and Preferred C tendered. And the</p> <p>9 shareholder that was supposed to have</p> <p>10 consented was no longer a shareholder and</p> <p>11 not authorized to consent to amendments or</p> <p>12 to authorize the depository to consent to</p> <p>13 those amendments on their behalf.</p> <p>14 Q. Did you discuss with Mr.</p> <p>15 Ashmore whether sufficient number of B</p> <p>16 holders had consented -- strike that.</p> <p>17 Did you discuss with him</p> <p>18 whether two-thirds of the B shareholders had</p> <p>19 consented to the charter amendments?</p> <p>20 A. I don't know if I used those</p> <p>21 same words, but I pointed out to him that</p> <p>22 Impac admits in the 10-Qs that they didn't</p> <p>23 even receive the tender from two-thirds or</p> <p>24 more of the Preferred B shareholders. So it</p> <p>25 was impossible for them to have received</p>	<p style="text-align: right;">Page 44</p> <p>1 CURTIS TIMM</p> <p>2 fact that the number of outstanding shares</p> <p>3 was 7, not 6 and two-thirds. So that seven</p> <p>4 is more than one-third of 20. One-third of 1</p> <p>5 would be 7. It was there in black and white.</p> <p>6 MS. PALMER: I'm going to offer</p> <p>7 mark Curtis number 3 which is a single</p> <p>8 page produced you, Mr. Timm. Sorry,</p> <p>9 Timm number 3 with the handwritten date</p> <p>10 6/30/2009 at notation Exhibit 8 at the</p> <p>11 bottom.</p> <p>12 (Timm Deposition Exhibit</p> <p>13 3 for identification, Part I. Financial</p> <p>14 information June 30, 2009 10-Q dated</p> <p>15 6/30/2009, no production numbers.)</p> <p>16 BY MS. PALMER:</p> <p>17 Q. This is a document produced by</p> <p>18 you, Mr. Timm. Can you tell us what it is?</p> <p>19 A. This appears to be the June 30,</p> <p>20 2009 10-Q.</p> <p>21 Q. Is that your handwriting at the</p> <p>22 top?</p> <p>23 A. Yes.</p> <p>24 Q. You see the circled number</p> <p>25 under stockholders equity describing the</p>
<p style="text-align: right;">Page 43</p> <p>1 CURTIS TIMM</p> <p>2 consent to the amendments from two-thirds or</p> <p>3 more of the Preferred B shareholders.</p> <p>4 Q. How did you determine from</p> <p>5 looking at Impac's 10-Q that fewer than</p> <p>6 two-thirds of the Preferred B shareholders</p> <p>7 had consented to the amendments?</p> <p>8 A. I just did the mathematics and</p> <p>9 I decided what was two-thirds of 2 million</p> <p>10 on the Preferred B. And I found out that</p> <p>11 more than a third of the Preferred B shares</p> <p>12 were still outstanding.</p> <p>13 So that made it impossible that</p> <p>14 Impac had purchased more than two-thirds, if</p> <p>15 more than a third was still outstanding.</p> <p>16 Q. Did you discuss your</p> <p>17 mathematical deduction with Mr. Ashmore in</p> <p>18 that first phone call in November 2009?</p> <p>19 MR. MINTON: Objection, asked and</p> <p>20 answered.</p> <p>21 A. Well, I told him your own</p> <p>22 figures prove what I'm saying. I probably</p> <p>23 read the figures to him.</p> <p>24 At the end of, or in the same</p> <p>25 balance sheet, the accountant has put the</p>	<p style="text-align: right;">Page 45</p> <p>1 CURTIS TIMM</p> <p>2 number of Series B shares outstanding?</p> <p>3 A. Yes.</p> <p>4 Q. Is that your number you based</p> <p>5 your mathematical deduction on that fewer</p> <p>6 than two-thirds of the B shares had</p> <p>7 consented to the amendments?</p> <p>8 A. Yes. And the 7 is opposite it.</p> <p>9 You see that under the June 30, 2009 column.</p> <p>10 Q. Yes. In your phone call with</p> <p>11 Mr. Ashmore had you made the deduction based</p> <p>12 on this June 30, 10-Q, by the time of that</p> <p>13 phone call had you made the deduction based</p> <p>14 on this June 30, 10-Q that fewer than</p> <p>15 two-thirds of the B shares had consented to</p> <p>16 the amendments?</p> <p>17 A. Correct.</p> <p>18 Q. Did you bring this deduction to</p> <p>19 the attention of Mr. Ashmore?</p> <p>20 A. Yes, of course.</p> <p>21 Q. How did he respond?</p> <p>22 A. He responded that Impac was</p> <p>23 unlike New Century and some of these others</p> <p>24 that had gone bankrupt and had never gone</p> <p>25 into bankruptcy and preserved their</p>

12 (Pages 42 to 45)

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<p style="text-align: right;">Page 110</p> <p>1 CURTIS TIMM</p> <p>2 voting rights have been conferred and are</p> <p>3 exercisable."</p> <p>4 Q. So in your view did Series B</p> <p>5 and Series C vote together as Parity</p> <p>6 Preferred with respect to election of</p> <p>7 Directors under this provision?</p> <p>8 A. Well apparently whoever drafted</p> <p>9 it doesn't believe this. Because immediately</p> <p>10 thereafter, it says, "Including the 9.375</p> <p>11 percent Series B cumulative redeemable for</p> <p>12 preferred stock as defined in the charter.</p> <p>13 Ranking on parity with the Series C</p> <p>14 Preferred Stock as to payment of</p> <p>15 distributions and distribution of assets</p> <p>16 upon liquidation."</p> <p>17 In other words, whoever drafted</p> <p>18 this thing recognized that those Parity</p> <p>19 Preferred with like voting rights that are</p> <p>20 exercisable in itself did not include the</p> <p>21 9.375 percent Preferred B. That's why they</p> <p>22 said included.</p> <p>23 Why would they include that if</p> <p>24 the parenthetical provision already clearly</p> <p>25 showed the Preferred B could vote as a</p>	<p style="text-align: right;">Page 112</p> <p>1 CURTIS TIMM</p> <p>2 Q. But here in the voting rights</p> <p>3 provisions of the Series C, B, there is a</p> <p>4 defined term Parity Preferred.</p> <p>5 A. Okay. Even if this will</p> <p>6 satisfy, even if that were the case, this</p> <p>7 only applies to the voting for two Directors</p> <p>8 on failure to pay six quarterly dividends.</p> <p>9 There is nothing like that or any provisions</p> <p>10 like that under the requirements to amend</p> <p>11 Preferred B or Preferred C.</p> <p>12 Q. If you turn to paragraph 6D on</p> <p>13 page 8 of the Series C Articles</p> <p>14 Supplementary, it provides for a vote, the</p> <p>15 affirmative -- I will read it to you "So</p> <p>16 long as any shares Series C Preferred Stock</p> <p>17 remain outstanding, the Corporation shall</p> <p>18 not, without the affirmative voter consent</p> <p>19 of the holders of at least two-thirds of the</p> <p>20 shares of the Series C Preferred Stock</p> <p>21 outstanding at the time, given in person or</p> <p>22 by proxy, either in writing or at a meeting</p> <p>23 (Voting separately as a class with all</p> <p>24 series of Parity Preferred) that the</p> <p>25 Corporation may issue upon which like voting</p>
<p style="text-align: right;">Page 111</p> <p>1 CURTIS TIMM</p> <p>2 separate group or as a single group with the</p> <p>3 Preferred C? They wouldn't.</p> <p>4 Q. So in this paragraph, however,</p> <p>5 the drafter defines Series C as ranking on a</p> <p>6 parity with Series B and voting together as</p> <p>7 Parity Preferred on election of Directors?</p> <p>8 MR. MINTON: Objection. I am not</p> <p>9 sure that is an accurate quote.</p> <p>10 A. I just answered that. I just</p> <p>11 answered that question.</p> <p>12 Q. I am not sure you did.</p> <p>13 A. What part --</p> <p>14 MR. MINTON: Wait. Let her ask it</p> <p>15 again. Maybe we'll understand it better.</p> <p>16 Q. The paragraph here has a</p> <p>17 definition of "Parity Preferred." Agreed?</p> <p>18 A. As such, no, I don't.</p> <p>19 Q. You don't agree it defines --</p> <p>20 A. I don't think it is defined as</p> <p>21 that. Nowhere is there the Parity Preferred</p> <p>22 constitutes these shares. You don't say it.</p> <p>23 Incidentally, it is on page 48, I think of</p> <p>24 your Offering Circular. You just say they</p> <p>25 rank on a parity.</p>	<p style="text-align: right;">Page 113</p> <p>1 CURTIS TIMM</p> <p>2 rights have been conferred and are</p> <p>3 exercisable."</p> <p>4 In your view does the term</p> <p>5 "Parity Preferred" here include both the C</p> <p>6 and the B?</p> <p>7 A. If you're saying does this</p> <p>8 paragraph make Preferred B and Preferred C</p> <p>9 "Parity Preferred" I would say no.</p> <p>10 Q. On what basis do you say no?</p> <p>11 A. Well I just explained. Because</p> <p>12 they are not equal. They are only on a</p> <p>13 parity with respect to distribution and</p> <p>14 liquidation distribution, which every</p> <p>15 preferred stock almost in the world has the</p> <p>16 same provision.</p> <p>17 If that made every preferred</p> <p>18 stock Parity Preferred with each other, you</p> <p>19 understand it makes no sense. It is not a</p> <p>20 correct definition.</p> <p>21 They have to be equal or</p> <p>22 equivalent to each other and equal in value.</p> <p>23 They never were and never are. You know,</p> <p>24 this is all superfluous because in order to</p> <p>25 vote you have to be material adversely</p>

29 (Pages 110 to 113)

30-Jun-09

665,592

Quarters

\$ 374,000.0000

\$ 18,700,000.0000

Quarters

1	\$ 5,610.00	\$ 5,610.00
2		\$ 11,220.00
3		\$ 16,830.00
4		\$ 22,440.00
5		\$ 28,050.00
6		\$ 33,660.00
7		\$ 39,270.00
8		\$ 44,880.00
9		\$ 50,490.00
10		\$ 56,100.00
11		\$ 61,710.00
12		\$ 67,320.00
13		\$ 72,930.00
14		\$ 78,540.00
15		\$ 84,150.00
16		\$ 89,760.00
17		\$ 95,370.00
18		\$ 100,980.00
19		\$ 106,590.00
20		\$ 112,200.00
21		\$ 117,810.00
22		\$ 123,420.00
23		\$ 129,030.00
24		\$ 134,640.00
25		\$ 140,250.00
26		\$ 145,860.00
27		\$ 151,470.00
28		\$ 157,080.00
29		\$ 162,690.00
30		\$ 168,300.00
31		\$ 173,910.00
32		\$ 179,520.00
33		\$ 185,130.00
34		\$ 190,740.00
35		\$ 196,350.00
36		\$ 201,960.00
37		\$ 207,570.00
38		\$ 213,180.00
39		\$ 218,790.00
40		\$ 224,400.00
41		\$ 230,010.00
42		\$ 235,620.00

50 periods

\$ 7,152,750.00

EXHIBIT E

43	\$ 241,230.00
44	\$ 246,840.00
45	\$ 252,450.00
46	\$ 258,060.00
47	\$ 263,670.00
48	\$ 269,280.00
49	\$ 274,890.00
50	\$ 280,500.00
<hr/>	
51	\$ 286,110.00
52	\$ 291,720.00
53	\$ 297,330.00
54	\$ 302,940.00
55	\$ 308,550.00

**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)	
)	

PROPOSED ORDER

Upon consideration of Curtis J. Timm's Motion for Class Certification and Other Relief, and any opposition thereto, thereto, it is this ____ day of _____, 2022, by the Circuit Court for Baltimore City, hereby

ORDERED, that Curtis J. Timm's motion is GRANTED in its entirety; and it is further,

ORDERED that a class defined as "All current owners of the the 9.375% Series B Cumulative Redeemable Preferred Stock excluding any current or former officers, directors, partners, and employees of Impac Mortgage Holdings, Inc. as well as their assigns or entities in which they have a controlling interest " is hereby certified; and it is further,

ORDERED that Curtis J. Timm shall serve as class representative and class counsel; and it is further

ORDERED that by _____, 2022, plaintiffs and defendant must submit to the court their proposed notice to class members and must appear before the court on _____, 2022 at _____ at which time the court will determine and approve the notice to be given to class members in this action; and it is further

ORDERED that Defendant, Impac Mortgage Holdings, Inc. is required to pay the following:

- A. cumulative dividends from the second quarter of 2009 through the quarter ending, _____, 2022 on the Series B shares held by class members;
- B. six percent (6%) prejudgment interest on each dividend from the effective date of the dividend through the date of this order;
- C. All expenses associated with providing notice to class members and processing the claims of class members; and
- D. attorneys' and/or class representative fees and expenses to Curtis J. Timm based on a percentage of the common fund recovered for the proposed class in an amount to be determined after the parties appear and present evidence to the court on _____, 2022 at _____.

Judge, Circuit Court for
Baltimore City, Maryland