

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

**FORM 8-K/A**

Amendment No. 1

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

Date of report (Date of earliest event reported) **September 7, 2022**

**Impac Mortgage Holdings, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Maryland**

(State or Other Jurisdiction of Incorporation)

**1-14100**

(Commission File Number)

**33-0675505**

(IRS Employer Identification No.)

**19500 Jamboree Road, Irvine, California**

(Address of Principal Executive Offices)

**92612**

(Zip Code)

**(949) 475-3600**

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

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

Title of each class	Trading Symbols	Name of each exchange on which registered
Common Stock, \$0.01 par value	IMH	NYSE American
Preferred Stock Purchase Rights	IMH	NYSE American

## EXPLANATORY NOTE

This Form 8-K/A is being filed to correct the website address previously provided to the Series B Preferred Class, as defined below. No other changes have been made to the originally filed 8-K.

### Item 8.01 Other Events

This Form 8-K is being filed by Impac Mortgage Holdings, Inc. (the “Company”) to satisfy certain orders of the Circuit Court of Baltimore City regarding notice in the matter *Curtis J. Timm, et. al. v. Impac Mortgage Holdings, Inc. et. al.*, Case No. 24-C-11-008391 (“Maryland Action”).

On August 8, 2022, the Circuit Court, Judge Lawrence P. Fletcher-Hill, entered an Amended Order Certifying Class and Providing for Class Notice and Final Hearing (“Class Certification Order”), which certified a class of all owners of the Company’s Series B Preferred stock from the close of the tender offer on June 29, 2009 to the date Final Judgment in the Maryland Action attains finality (“Series B Preferred Class”). On August 29, 2022, the Circuit Court approved the form and contents of a notice to the members of the Series B Preferred Class (the “Notice to Series B Preferred Class”).

The Notice to Series B Preferred Class, as well as the complaints and primary papers in the Maryland Action, including the Circuit Court’s opinions and orders, are available for review on the Class Notice website at [www.impacmortgageholdingsseriesbpreferredclassaction.com](http://www.impacmortgageholdingsseriesbpreferredclassaction.com), and on the Company’s website at <https://ir.impacompanies.com/series-b-preferred-class-action>.

If you have any questions about the Maryland Action, the Notice to Series B Preferred Class, the proposed Final Judgment or the Final Hearing (each as defined in the Class Certification order), you should consult your own counsel, or direct your questions to Plaintiffs’ Class Counsel, John B. Isbister, Daniel S. Katz, or Tydings & Rosenberg LLP, in the Maryland Action, at 1 East Pratt St., Suite 901, Baltimore, MD 21202. The Class Certification Order and Notice to Series B Preferred Class are attached hereto as Exhibits 99.1 and 99.2, respectively, and incorporated herein by reference.

### Item 9.01 Exhibits

#### Exhibit Number

99.1 [Amended Order Certifying Class and Providing for Class Notice and Final Hearing, dated August 8, 2022.](#)

99.2 [Notice of Pendency of Class Action, Proposed Judgment, Final Hearing and Right to Appear and Object, dated August 29, 2022.](#)

104 Cover Page Interactive Data File (embedded within the XBRL document).

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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 hereunto duly authorized.

**IMPAC MORTGAGE HOLDINGS, INC.**

Date: September 15, 2022

By: /s/ Joe Joffrion  
Name: Joe Joffrion  
Title: Senior Vice President and General Counsel

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**CURTIS J. TIMM, *et al.*,**  
**Plaintiffs,**  
**v.**  
**IMPAC MORTGAGE HOLDINGS,**  
**INC., *et al.*,**  
**Defendant.**

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

**Case No. 24-C-11-008391**

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**AMENDED ORDER CERTIFYING CLASS AND**  
**PROVIDING FOR CLASS NOTICE AND FINAL HEARING**

On remand from the Court of Appeals of Maryland, Plaintiff Curtis J. Timm filed a Motion for Class Certification and Other Relief (Paper No. 165), and Plaintiff Camac Fund LP (“Camac”) filed a Motion to Certify Class, Appoint Class Representative and Lead Counsel, Preliminarily Determine Right to Receive Dividends, and Set Final Judgment Hearing (Paper No. 164). Defendant Impac Mortgage Holdings, Inc. (“Impac”) filed a combined Responding Position Regarding Plaintiffs’ Respective Motions for Class Certification and Other Relief (Paper No. 165/1). Plaintiff Camac filed an opposition to Plaintiff Timm’s motion (Paper No. 165/4), and Plaintiff Timm filed a reply memorandum to both Camac’s and Impac’s arguments (Paper No. 165/3). Plaintiff Timm filed a response to Plaintiff Camac’s motion (Paper No. 164/2), and Plaintiff Camac filed a reply memorandum in support of its motion (Paper No. 164/3). The Court conducted a hearing on the motions on February 18, 2022 by remote electronic means pursuant to Maryland Rule 2-802 using Zoom for Government. All parties appeared by counsel.

The Court issued a Memorandum Opinion and Order Certifying Class and Providing for Class Notice and Final Hearing on July 22, 2022. Based on further discussion at a July 27, 2022 conference with counsel for all parties, the Court issues this Amended Order to modify the class definition, to set the Final Hearing date, and to modify certain other provisions of the Order.

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For the reasons stated in the Memorandum Opinion issued on July 22, 2022, it is this 8th day of August, 2022, by the Circuit Court for Baltimore City, Part 26, hereby **FOUND** that this action is appropriate to be certified as a class action for determination of all remaining issues at a Final Hearing following notice to the class, the filing of petitions for attorneys' fees, expenses, and any other individual special monetary awards, and an opportunity for class members to object to the Proposed Final Relief, as defined below, or the award of attorneys' fees, expenses, and any other individual special monetary awards.

It is further **FOUND** that the number of plaintiffs in the class is so numerous that joinder of all class members individually is not practical.

It is further **FOUND** that there are questions of law or fact common to the class, including the final issue to be decided of which Series B shareholders are entitled to receive the amount of the dividends that Defendant Impac should have declared in the second, third, and fourth quarters of 2009.

It is further **FOUND** that the claims of the representative plaintiff are typical of the claims of the class.

It is further **FOUND** that the representative plaintiff will fairly and adequately protect the interests of the class.

It is therefore **FOUND** that all four requirements of Maryland Rule 2-231(b) are satisfied in this action.

It is further **FOUND** that Defendant Impac acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole.

It is further **FOUND** that the final injunctive and declaratory relief will affect the rights or potential rights of all Series B shareholders from 2009 to the present and therefore all those shareholders must be included in the class and must not be permitted to opt out of the class.

It is therefore **FOUND** that this action can be maintained appropriately as a non-opt-out class action pursuant to Maryland Rule 2-231(c)(2).

It is further **FOUND** that it is appropriate to give all class members notice of the Proposed Final Relief in this action and to the forthcoming petitions for attorneys' fees, expenses, and any other individual special monetary awards so that any past Series B shareholders will have an opportunity to object to the Proposed Final Relief and to the petitions for attorneys' fees, expenses, and any other individual special monetary awards.

It is further **FOUND** that because of the difficulty or impossibility of identifying all Series B shareholders who owned shares at some time from 2009 to the present but who do not currently own those shares, the method of providing notice by publication and web site availability proposed by Plaintiff Camac and Defendant Impac is the best practicable means of providing notice to class members and satisfies the requirements of Maryland Rule 2-231 and due process.

It is therefore **ORDERED** that Plaintiff Timm's Motion for Class Certification and Other Relief (Paper No. 165), including both his positions with respect to the terms of class certification and all of his arguments for additional relief on a class basis, is **DENIED**.

It is further **ORDERED** that Plaintiff Camac Fund LP's Motion to Certify Class, Appoint Class Representative and Lead Counsel, Preliminarily Determine Right to Receive Dividends, and Set Final Judgment Hearing (Paper No. 164) is **GRANTED**.

It is further **ORDERED** that this action shall proceed to conclusion as a non-opt-out class action certified pursuant to Maryland Rule 2-231(c)(2).

It is further **ORDERED** that the plaintiff class is defined as:

All owners of Series B Preferred stock of Impac Mortgage Holdings, Inc. from the close of the tender offer on June 29, 2009, until the date that the Final Judgment issued in this action attains finality. The Final Judgment will attain finality (a) thirty-one days after it is entered by the Clerk if no post-judgment motions and no appeals are filed; (b) thirty-one days after resolution of any post-judgment motions if no appeals are filed; or (c) after final resolution of any appeals, whichever date is latest.

It is further **ORDERED** that Plaintiff Camac Fund LP is designated as the Class Representative.

It is further **ORDERED** that John B. Isbister, Esquire and Daniel S. Katz, Esquire, both of Tydings & Rosenberg LLP, are designated Class Counsel.

It is further **ORDERED** that the Court will conduct informal discussions and/or further conferences by remote electronic means with all parties (including Plaintiff Timm) within the next week to discuss notice issues and other procedural issues raised in the Court's Memorandum Opinion. Following those discussions, the Court will issue an order approving the form of the Class Notice. The terms of this Order may be amended or supplemented based on those discussions and subsequent developments.

It is further **ORDERED** that the Court will conduct a Final Hearing on December 5, 2022, at 2:00 p.m., by remote electronic means, after notice to the class has been completed and after class members have had an opportunity to file objections to the Proposed Final Relief and to the petitions for attorneys' fees, expenses, and any other individual special monetary awards.

The Final Hearing may be joined using the following link:

Join ZoomGov Meeting  
<https://mdcourts.zoomgov.com/j/1609081730?pwd=NjVQS3VKcGMUUmVTL3prWGFLVUIMUT09>  
Meeting ID: 160 908 1730  
Passcode: 17395955

One tap mobile  
+16692545252,,1609081730# US (San Jose)  
+16468287666,,1609081730# US (New York)  
Dial by your location  
+1 669 254 5252 US (San Jose)  
+1 646 828 7666 US (New York)  
+1 551 285 1373 US  
+1 669 216 1590 US (San Jose)  
833 568 8864 US Toll-free  
Meeting ID: 160 908 1730

It is further **ORDERED** that Plaintiffs Timm and Camac shall file, no later than **August 12, 2022**, any petition for award of attorneys' fees and expenses or for any other form of monetary award that the party intends to present. Any petition filed shall include the specific amount claimed in each category sought so that notice to the class can include the maximum amount that might be awarded if the petition is granted. The petitions may be filed without full memoranda in support as long as they clearly state the maximum relief sought.

It is further **ORDERED** that full memoranda and documentation in support of the petitions, if not filed with the petitions, shall be filed no later than sixty (60) days before the Final Hearing.

It is further **ORDERED** that any responses to the petitions shall be filed no later than thirty (30) days before the Final Hearing.

It is further **ORDERED** that any reply memoranda in support of the petitions shall be filed no later than fifteen (15) days before the Final Hearing.



It is further **ORDERED** that Defendant Impac shall promptly request that The Depository Trust Company (“DTC”) make available to KCC, LLC, or such other notice administrator designated by the parties and the Court (“Notice Administrator”) its stock transfer records and shareholder information in electronic form, to the extent reasonably available, to enable the Notice Administrator or its administrative agent to identify record owners and beneficial owners as of the date of this Order and to provide written or electronic communication to those owners with a web address linking to the full Notice. This information shall be provided to the Notice Administrator no later than **August 12, 2022**.

It is further **ORDERED** that the Notice Administrator and Defendant Impac shall administer the Notice Program substantially as follows:

1. The Class Notice, as revised and approved following discussions with the parties, shall be made available to class members in accordance with the Notice Program.
2. All record holders who are not or were not also the beneficial owners of Series B stock shall be asked to forward the Class Notice to the beneficial owners of those shares within seven (7) days of receipt.
3. The Notice Administrator shall make additional copies of the Class Notice available to any record holder who, prior to the Final Hearing, requests the same for distribution to beneficial owners or provide additional copies of the Class Notice to beneficial owners whose names and addresses the Notice Administrator receives from record owners.
4. The Notice Administrator shall host a website that includes a link to the Class Notice.
5. Defendant Impac shall include a link to the Class Notice on its website.

6. Defendant Impac shall file a Form 8-K with the United States Securities and Exchange Commission describing the Class Notice and providing website links where the Class Notice can be found.
7. The Notice Administrator shall prepare and disseminate a press release describing the Class Notice and its availability to all outlets that it determines to be appropriate.
8. The Notice Administrator shall cause a summary of the Class Notice that provides a web address for the full Class Notice to be published in *Investor's Business Daily*.

It is further **ORDERED** that at least fifteen (15) days before the Final Hearing, Defendant Impac and the Notice Administrator shall file affidavits establishing compliance with this Order concerning the Notice Program and describing all steps taken as part of the Notice Program.

It is further **ORDERED** that Plaintiff Camac shall pay 50% of the expenses of providing class notice, with those expenses ultimately included in its petition for attorneys' fees and expenses, and Defendant Impac shall pay the remaining 50%.

It is further **ORDERED** that Defendant Impac shall establish a record date of August 15, 2022 for payment of the amount of the dividends previously determined by this Court to be due for three quarters in 2009, which amount the parties agree is \$1,169,985.94, and shall pay that amount into the registry of the Court no later than August 19, 2022, to be held pending final resolution of all issues and final determination by the Court of the appropriate distribution of those funds. Impac shall have no further right or obligation with respect to the funds deposited to the registry, except as necessary to effectuate the final determination of the Court.

It is further **ORDERED** that, as stated in the Memorandum Opinion, the Court has tentatively and preliminarily concluded that the Court will enter final injunctive relief requiring that the amount of the required dividends, less any deductions allowed by the Court, be paid to the owners of Series B Preferred stock as of the August 15, 2022 record date (“the Proposed Final Relief”). This preliminary conclusion is subject to consideration of any objection filed by any class member.

It is further **ORDERED** that no class member has a right to opt out or to be excluded from the plaintiff class.

It is further **ORDERED** that any class member who objects to the Proposed Final Relief or to the award of attorneys’ fees, expenses, or any other amount to either Plaintiff or to Class Counsel may appear with or without counsel at the Final Hearing and present evidence or argument in support of the objection; provided, however, that except by order of the Court for good cause shown, no class member shall be heard to object unless, not later than thirty (30) days before the Final Hearing, the class member files with the Court and serves upon counsel listed below: (a) a written notice of intention to appear; (b) a statement made under penalty of perjury of the number of shares of Impac Series B stock held by such person, including the date(s) of acquisition and disposition of any such stock and any and all supporting documents relating thereto; (c) a statement of the basis for the class member’s objections to the Proposed Final Relief or to the award of attorneys’ fees, expenses, or any other amount to either Plaintiff or to Class Counsel; and (d) any documents or writings the class member wishes the Court to consider. Copies of such filings shall be served by hand or by mail on the following counsel:

John B. Isbister, Esq.  
Daniel S. Katz, Esq.  
Tydings & Rosenberg LLP  
1 East Pratt St., Suite 901  
Baltimore, MD 21202  
*Class Counsel*

Pamela S. Palmer, Esq.  
Troutman Pepper  
350 South Grand Avenue  
Two California Plaza, Suite 3400  
Los Angeles, CA 90071-3427  
*Co-counsel for Defendant Impac*

G. Stewart Webb, Esq.  
Venable LLP  
750 E. Pratt Street, Suite 900  
Baltimore, MD 21202  
*Co-counsel for Defendant Impac*

Unless the Court directs otherwise, any class member who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action.

It is further **ORDERED** that Class Counsel shall promptly share with Plaintiff Timm any objection received by Class Counsel.

It is further **ORDERED** that this Order is subject to modification as circumstances may require.

*Judge Fletcher-Hill's signature appears on the original document in the court file.*

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Judge Lawrence P. Fletcher-Hill

CURTIS J. TIMM, *et al.*,

Plaintiffs,

v.

IMPAC MORTGAGE HOLDINGS, INC., *et al.*,

Defendant.

IN THE CIRCUIT COURT

FOR BALTIMORE CITY

Case No. 24-C-11-008391

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED JUDGMENT, FINAL HEARING, AND RIGHT TO APPEAR AND OBJECT**

**TO: ALL PERSONS AND ENTITIES WHO HELD OR ACQUIRED SERIES B PREFERRED STOCK OF IMPAC MORTGAGE HOLDINGS INC. (TICKER SYMBOL: IMPHP) AT ANY TIME FROM THE CLOSE OF THE TENDER OFFER ON JUNE 29, 2009 UNTIL THIS ACTION IS FINALLY CONCLUDED.**

**IF YOU WERE NOT A BENEFICIAL HOLDER OF SERIES B PREFERRED STOCK OF IMPAC MORTGAGE HOLDINGS INC., BUT HELD SUCH STOCK FOR A BENEFICIAL OWNER DURING THE RELEVANT TIME PERIODS, YOU ARE DIRECTED TO TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER WITHIN SEVEN DAYS.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION.**

This Class Notice is given pursuant to an Order of the Circuit Court for Baltimore City (the “Court”), in accordance with Maryland Rule 2-231, to inform you of the proceedings in the above-captioned consolidated action (the “Action”). If you were not a beneficial owner of Series B Preferred stock of Impac Mortgage Holdings Inc. (“Impac” or the “Company”) held of record by you at any time from the close of the tender offer on June 29, 2009, to the present, but held such Impac Series B Preferred stock for a beneficial owner, you are directed to forward this Class Notice to the beneficial owner within seven (7) days. If you need additional copies of the Class Notice for forwarding to such beneficial owners, you may request additional copies from KCC LLC, [info@ImpacMortgageHoldingsSeriesBPreferredClassAction.com](mailto:info@ImpacMortgageHoldingsSeriesBPreferredClassAction.com).

There will be a hearing (the “Final Hearing”) before the Court on December 5, 2022, at 2:00 p.m., by remote electronic means, to determine: (1) whether the proposed Final Judgment Order, described below, should be entered as the Final Judgment for the Class; (2) whether the request by counsel for the Class Representative and the Class for an award of attorneys’ fees and expenses should be granted; and (3) whether any other request for individual special monetary awards should be granted. It is not necessary for any member of the Class, or any other shareholder of Impac, to appear at the Final Hearing, but any class member who objects to the Proposed Final Relief, as defined in Paragraph 30 below, or to the petitions for attorneys’ fees, expenses, and any other individual special monetary awards must file a written objection within the time provided in this Class Notice. All class members will be bound by the Final Judgment in this Action.

The Plaintiff class is defined as:

**All owners of Series B Preferred stock of Impac Mortgage Holdings, Inc. from the close of the tender offer on June 29, 2009, until the date that the Final Judgment issued in this action attains finality. The Final Judgment will attain finality (a) thirty-one days after it is entered by the Clerk if no post-judgment motions and no appeals are filed; (b) thirty-one days after resolution of any post-judgment motions if no appeals are filed; or (c) after final resolution of any appeals, whichever date is latest.**

### **Background of the Litigation**

1. Defendant, Impac Mortgage Holdings, Inc. is a Maryland corporation that issued two series of Preferred stock, Series B and Series C, in 2004. The Series B Preferred stock was authorized by Impac's Board of Directors and issued in May 2004. Series C Preferred was authorized and issued in November 2004.
2. Each series of Preferred stock had its own Articles Supplementary that granted the shareholders certain dividend, voting, and other rights. The two series had different interest rates. Under the Articles Supplementary for each series, subject to qualifications, the holders were entitled to receive "when and as authorized by the Board of Directors" dividends in a fixed amount payable quarterly in arrears. The dividends were cumulative, meaning that if the Company did not declare and pay quarterly dividends, they continued to accrue and accumulate. The Company could not pay a dividend on its common stock or take other specified corporate actions until all accrued dividends on the Preferred stock were declared and paid or set aside. And, if six quarters of dividends were in arrears, a special meeting could be called by at least 20% of the preferred shareholders to vote to elect two additional directors to the Board.
3. On May 29, 2009, Impac launched a tender offer for all of the Series B and Series C Preferred stock, which Impac stated was conditioned upon the consent by at least 66 2/3% of the holders of Series B and Series C voting together to amend the Series B and Series C Articles Supplementary. Impac offered to purchase Series B shares for \$0.29297 per share and Series C shares for \$0.28516 per share and to pay all accrued and unpaid dividends on all Parity Preferred stock (including untendered stock), if the tender offer and consent solicitation closed on the terms set forth in the Offering Circular.
4. Section 6(d) of the 2004 Series B Articles Supplementary states, in pertinent part:

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), (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" (hereafter, the "Voting Rights Provision").

Identical language, except with a reference to Series C in place of the reference to Series B, was set forth in the 2004 Series C Preferred Articles Supplementary.
5. Impac's Offer to Purchase and Consent Solicitation ("Offering Circular") stated that tendering Series B and Series C stockholders were required to consent to proposed amendments to the terms of the Series B and Series C Articles Supplementary as a condition to validly tendering their stock to Impac for purchase. The proposed amendments were to do the following:
  - a. make future dividends non-cumulative;
  - b. eliminate the provisions prohibiting payment of dividends on junior stock and the purchase or redemption of junior or parity stock, if full cumulative dividends are not paid or declared and set apart for payment;
  - c. eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company, the right to which expired in 2009;
  - d. eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth anniversary of the issue date;

- e. eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment;
  - f. eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods; and
  - g. eliminate the right of holders of Preferred Stock to consent or approve the authorization or issuance of preferred stock senior to the Preferred Stock.
6. On June 30, 2009, Impac announced that on June 29, 2009, in connection with the Offer to Purchase and Consent Solicitation for its Series B and Series C Preferred Stock, the Company had received consents from holders of in excess of 66 2/3% (two-thirds) of the outstanding shares of the Preferred Stock, counting Series B and Series C together. The Company did not claim to have received consents from holders of two-thirds of the Series B Preferred Stock. The Company also announced that holders of more than 50% (fifty percent) of the common stock had voted in favor of the proposed amendments, which was an additional requirement for Impac to amend the Articles Supplementary.
7. On June 29, 2009, the Company filed Articles of Amendment to the terms of each of the Series B and Series C Preferred Stock Articles Supplementary.

### **The Litigation**

8. On December 7, 2011, plaintiff Curtis Timm filed a complaint containing six Counts contesting the effectiveness of the Preferred Stockholder consents to amend the Series B and Series C Articles Supplementary.
9. Defendants filed a motion to dismiss the entire complaint, including all six Counts.<sup>1</sup> The Court treated the motion as one for summary judgment and granted judgment, in part, for the Defendants on Counts II, III and V. In a Memorandum Opinion and Order dated January 28, 2013, the Court dismissed all claims involving the Series C Preferred stock (Counts II and III), leaving as the sole issue the Series B voting rights as described in Count I, IV, and VI (discussed below).
10. Timm filed a motion with the Court to reconsider dismissal of Counts II and III (concerning the validity of the consents of any holders of the Preferred Stock), which was denied by the Court in a Memorandum Opinion and Order dated November 27, 2013.
11. In March 2014, plaintiff Camac Fund LP (“Camac”), another holder of Series B and C Preferred Stock, filed a complaint in intervention asserting the same allegations and causes of action as Timm, with the exception of Timm’s Count V for punitive damages. Camac, as did Timm previously, sought to proceed with the case as the representative of a class action on behalf of the holders of Series B and C Preferred Stock.
12. After the Court’s ruling on summary judgment in January 2013, three Counts remained unresolved concerning the Series B Preferred Stock. Plaintiffs asserted that the language of the voting rights provision in the Series B Articles Supplementary required the holders of two-thirds of the Series B Preferred Stock to vote or consent to the 2009 amendments and that consent of two-thirds of the Series B and Series C combined was not sufficient to amend the Series B Articles.
13. Plaintiffs contended that the voting rights language meant that Impac could not adopt the proposed amendments affecting the rights of the Series B Preferred Stock without the vote of two-thirds of the shares of the Series B. Impac contended that the language of the voting rights provision allowed it to adopt the proposed amendments to the Series B Articles without two-thirds of the Series B consent if it received two-thirds consent from the holders of the Series B and the Series C, counted together. The major issue that remained to be resolved by the Court was interpretation of the Series B Voting Rights Provision.

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<sup>1</sup> In addition to suing Impac, the Timm Complaint named members of Impac’s Board of Directors. The Court dismissed the claims against the Directors, leaving Impac as the sole defendant.

14. As to the Series B Preferred, the Timm and Camac complaints alleged (in Counts I, IV, and VI of the Timm complaint and Counts I, IV and V of the Camac complaint) that: (a) the Series B Articles Supplementary required the separate consent of two-thirds of the Series B shares in order to amend the Series B Articles Supplementary, (b) because Impac did not receive consents from two-thirds of the Series B shares, the 2009 amendment to the Series B Articles was ineffective, (c) Impac breached the 2004 Series B Articles Supplementary by adopting the 2009 amendments, rendering those amendments invalid, (d) Impac breached the 2004 Series B Articles Supplementary by repurchasing certain Preferred Stock in the fourth quarter of 2009 (after the 2009 amendments) without having paid full cumulative dividends to the holders of Series B Preferred, (e) as a result, Impac was required to have paid certain dividends to holders of Series B Preferred stock, and (f) holders of at least 20% of the Series B Stock were entitled to call a special meeting to elect two additional directors to Impac's Board of Directors once six quarters of dividends were in arrears.
15. The Court concluded in its Opinion and Order dated January 29, 2013, that the Voting Rights Provision in the 2004 Articles Supplementary for Series B, paragraph 6(d) was "not unambiguous" and required extrinsic evidence to determine its meaning. The parties conducted extensive discovery, including 11 depositions, on the issue of the meaning of the Voting Rights Provision.
16. Impac filed a Motion for Summary Judgment on the Series B voting rights issue. Plaintiffs filed an opposition and a Cross-Motion for Summary Judgment. Impac filed an Opposition to the Cross-Motion and Reply Memorandum in support of its motion. Plaintiffs filed a Reply Memorandum in support of their Cross-Motion.
17. On December 29, 2017, the Court issued a Memorandum Opinion and Order ruling on some of the outstanding Motions. The Court granted Plaintiffs' Cross-Motion for Summary Judgment and denied Impac's Motion for Summary Judgment and held that the Voting Rights Provision required Impac to obtain consent from holders of two-thirds of the Series B Preferred prior to amending the Series B Articles Supplementary and, because it failed to do so, the Series B Articles Supplementary were not validly amended.
18. Thereafter, the parties filed multiple papers addressing the remedies to be granted, as well as motions and requests by Timm to reconsider prior rulings. After considering these papers, and the argument of the parties, this Court entered a Memorandum Opinion and Judgment Order on July 16, 2018, which Order was corrected by Order dated July 24, 2018.
19. In its July 16, 2018, Order, as corrected, the Court (a) declared that, with respect to the Series B Preferred Stock, the 2009 amendments to the Articles Supplementary were not validly adopted and the Articles Supplementary adopted in 2004 remain in full force and effect, (b) entered judgment in favor of individual defendants on all claims asserted against them, (c) entered judgment in favor of Impac on the claims asserted in Counts II, III, and V of the Timm Complaint and in Counts II and III of the Camac Complaint, (d) ordered Impac to hold a special election in accordance with Section 6(b) of the Articles Supplementary, and (e) ordered that the Articles Supplementary required Impac to pay dividends on Series B shares for the second, third, and fourth quarters of 2009. The Court resolved all issues with the exception of (a) a determination of which Series B stockholders would receive the three quarters of dividends, (b) what, if any, attorneys' fees would be awarded, and (c) whether a class action would be certified. The Court ruled that all other issues in the case had been decided and entered a partial final judgment on those issues.
20. Impac filed an appeal from the Court's decision, and Timm filed a cross-appeal. The Court of Special Appeals of Maryland affirmed the Circuit Court's orders. Impac petitioned to the Court of Appeals of Maryland for a writ of *certiorari*, which was granted. The Court of Appeals then affirmed the Circuit Court's orders.
21. Camac filed a Motion to Certify Class, Appoint Class Representative and Lead Counsel, Preliminarily Determine Right to Receive Dividends, and Set Final Judgment Hearing ("Camac Class Motion"). Timm filed a Motion for Class Certification and Other Relief. All parties responded to each motion and a hearing was held and the Camac Class Motion was granted.



**Summary of the Terms of The Class Certification Order**

22. The Order Certifying Class and Providing for Class Notice and Final Hearing, dated July 22, 2022, as amended on August 8, 2022 (the “Class Certification Order”) has been filed with the Court and is available for your inspection as discussed below under the heading, “INQUIRIES.” The following is only a summary of its terms. The Court has:

- a. Certified the Action as a non-opt-out class action, meaning that class members will be bound by the Final Judgment entered in the Action.
- b. Certified the Action as a class action pursuant to Maryland Rule 2-231(c)(2), on behalf of a class consisting of:

All owners of Series B Preferred stock of Impac Mortgage Holdings, Inc. from the close of the tender offer on June 29, 2009, until the date that the Final Judgment issued in this action attains finality. The Final Judgment will attain finality (a) thirty-one days after it is entered by the Clerk if no post-judgment motions and no appeals are filed; (b) thirty-one days after resolution of any post-judgment motions if no appeals are filed; or (c) after final resolution of any appeals, whichever date is latest.

- c. Designated Camac as the Class Representative and designated Camac’s counsel, Tydings & Rosenberg LLP, John B. Isbister, and Daniel S. Katz, as Class Counsel.
- d. Provided deadlines for the Class Representative and Class Counsel to file a petition for award of attorneys’ fees and expenses, including the expense of providing Class Notice.
- e. Provided deadlines for plaintiff Timm to file a petition for award of attorneys’ fees and expenses and any other special individual monetary relief.
- f. Provided the means by which notice is being provided to the class, including deadlines for class members to file any objections to the proposed Final Judgment.
- g. Required defendant Impac to establish a record date of August 15, 2022 for payment of the amount equal to Series B Preferred Stock dividends at 9.375% interest for the quarters ending June 30, 2009, September 30, 2009, and December 31, 2009 (the “2009 Dividend Amount”), which amount the parties agree is \$1,169,985.94, and to pay that amount into the registry of the Court to be held pending final resolution of all issues and final determination by the Court of the appropriate distribution of those funds.<sup>2</sup>
- h. Determined preliminarily and subject to final determination after consideration of any objections by any class members that the 2009 Dividend Amount, less any deductions allowed by the Court, shall be paid to the owners of Series B Preferred stock as of the August 15, 2022 record date.
- i. Scheduled a Final Hearing on December 5, 2022, at 2:00 p.m., to consider all remaining issues and to enter a Final Judgment.

**Petitions for Attorneys’ Fees, Expenses, and Other Special Monetary Relief**

23. Class Counsel, Tydings & Rosenberg LLP, has filed an application for attorneys’ fees and litigation expenses to be paid from a portion of the benefits that members of the Class receive as a result of the litigation. The actual amount that will be awarded will be determined by the Court at the Final Hearing. Class Counsel have requested a maximum award of attorneys’ fees of \$2,800,000.00 plus their litigation expenses in an amount not to exceed \$19,300.49, plus 50% of the costs of issuing this Class Notice, not to exceed \$11,000.00. Class Counsel seek an order that provides that any award of fees and expenses be paid from the common fund that they obtained for the Class in this litigation—specifically:

- a. An award of reimbursement of expenses and a portion (not to exceed 33 1/3%) of the 2009 Dividend Amount as described above;

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<sup>2</sup> This amount was paid into the registry of the Court on August 18, 2022.

- b. A portion (not to exceed 33 1/3%) of any future value received by Series B Preferred shareholders (including dividends, distributions of any kind, conversions, exchanges, redemptions, repurchases or other transactions that provide value) in lieu of, attributable to, or related to, in whole or in part, the right of Series B Preferred shareholders to receive dividends, until the fees awarded by the Court have been paid in full;
  - c. However, if the pending Exchange Offer made by Impac Mortgage Holdings, Inc. pursuant to its Prospectus/Consent Solicitation that forms a part of its Registration Statement on Form S-4, as amended (Commission File No. 333-266167), is successful and a restructuring occurs pursuant to the Exchange Offer, Class Counsel will reduce its total claim for attorneys' fees to \$1,005,667.91 plus litigation expenses to be payable from the 2009 Dividend Amount and in a manner to be determined from non-common stock consideration received by the Series B Preferred shareholders pursuant to the restructuring.
24. Class Representative Camac has filed a request for an Incentive Award of \$5,000.00 to be paid to it from the 2009 Dividend Amount in addition to the amount it will receive as a Series B Preferred shareholder in recognition of its efforts as a plaintiff and Class Representative in this Action.
25. Plaintiff Timm has filed an application for an incentive award and reimbursement of litigation expenses to be paid from a portion of the benefits that members of the Class receive as a result of the litigation. The actual amount that will be awarded will be determined by the Court at the Final Hearing. Plaintiff Timm has requested a maximum incentive award of \$4,500,000 to be paid as follows: (a) a maximum of one-third of the 2009 Dividend Amount, (b) a maximum or portion not to exceed one-third of any future value received by Series B Preferred shareholders as described in paragraph 23(b) above or alternatively a maximum of one-third of the proposed Exchange Offer to Series B Preferred shareholders, if lawfully approved as described in paragraph 23(c) above, plus (c) litigation expenses in an amount not to exceed \$90,000.00 to be reimbursed from the 2009 Dividend Amount or in a manner to be determined from non-common stock consideration received by the Series B Preferred shareholders pursuant to the proposed Exchange Offer as described in paragraph 23(c), above.
26. The amounts of any attorneys' fees, expenses, or Incentive Awards to be awarded to Class Counsel, Class Representative Camac, or plaintiff Timm and the method of payment of them will be determined by the Court at the Final Hearing. The requests have been filed as of August 12, 2022, and full support for them will be filed no later than sixty (60) days before the Final Hearing. Any class member may object to the requests by filing an objection, as described below, no later than thirty (30) days before the Final Hearing.
27. On August 25, 2022, this Court ordered that, if the Exchange Offer closes prior to December 5, 2022, then within five (5) business days after such closing date, Impac shall, pending finality of the Court's final resolution of all issues: (a) if Impac pays cash consideration to the Series B shareholders, deposit 40%, or \$1,331,184.00, into the Registry of the Court; (b) if Impac pays new Preferred D stock in lieu of cash consideration to the Series B shareholders, cause 40% of the Series D stock, or 13,311,840 shares, to be held in the custody of a suitable third-party custodian or escrow holder; and, in either event, (c) cause thirty-three and one-third percent (33 1/3%) of the common stock, or 4,437,280 shares, to be held in the custody of a suitable third-party custodian or escrow holder. The Order further directed that all costs associated with such deposits or escrows and subsequent distributions shall be borne by Impac. After the finality of the Court's final determination of the amounts, if any, awarded to Class Counsel, Camac, and/or Timm, there remains any excess cash, Preferred B stock, or common stock, such excess shall be distributed to the former record holders of Series B preferred stock as of the close of business on the date that the Exchange Offer expired. Upon deposit to the registry or transfer to the custody of a third-party custodian or escrow holder, Impac shall have no further right or obligation with respect to such funds and stock, except to pay the costs described herein and as necessary to effectuate the final determination of the Court.

**The Effect of the Final Judgment on Your Rights and Your Right to Object**

28. If the Court enters Final Judgment as proposed, then the 2009 Dividend Amount paid by Impac, reduced by any amounts awarded by the Court for attorneys' fees, expenses, and Incentive Awards to be withheld from the 2009 Dividend Amount, will be distributed to members of the Class as determined by the Court. Subsequent payments or distributions to members of the Class may be reduced by amounts awarded by the Court for attorneys' fees and expenses.
29. Not all members of the Class will be entitled to receive distributions from the 2009 Dividend Amount. As described above, the Court has determined preliminarily that the only Series B Preferred shareholders entitled to receive distributions will be those who owned Series B Preferred stock on the August 15, 2022 record date. The Court will consider this preliminary conclusion at the Final Hearing in light of any objections filed to it. The Final Judgment shall be binding on all members of the Class, including the successors and assigns of all members of the Class, without regard for whether a particular Class member does or does not receive a distribution as a result of the Final Judgment.
30. Any Class member who wishes to object to the Proposed Final Relief, which is the entry of final injunctive relief requiring the 2009 Dividend Amount, less any deductions allowed by the Court, be paid to the owners of Series B Preferred stock as of the August 15, 2022 record date, or to the applications for award of fees and expenses or Incentive Awards to Class Counsel, Class Representative Camac, or plaintiff Timm must file a written objection with the Court **no later than thirty (30) days before the Final Hearing**, which is scheduled for December 5, 2022. Objections must be received by the Clerk by the deadline and should be mailed or delivered by hand to: Clerk, Circuit Court for Baltimore City, 111 N. Calvert Street, Baltimore, MD 21202. Any objection must include: (i) a written notice of intention to appear; (ii) a statement submitted under penalty of perjury of the number of shares of Impac Series B Preferred stock held by such person, including the date(s) of acquisition and disposition of any such stock, and any and all supporting documents relating thereto; (iii) a statement of such person's objections to the Proposed Final Relief or to the applications for award of fees and expenses or Incentive Awards to Class Counsel, Class Representative Camac, or plaintiff Timm; and (iv) the grounds for such objections and the reasons that the objecting Class member desires to appear and be heard, as well as all documents or writings the objecting Class member desires the Court to consider.
31. Any objection filed with the Court, including copies of all supporting papers, must also be served, by hand delivery or first-class mail, on the following counsel:

<b><i>Counsel for Plaintiff Camac</i></b> Tydings & Rosenberg LLP John B. Isbister, Esq. Daniel S. Katz, Esq. 1 East Pratt Street Suite 901 Baltimore, MD 21202	<b><i>Co-counsel for Defendant Impac</i></b> Troutman Pepper Hamilton Sanders LLP Pamela S. Palmer, Esq. 350 South Grand Avenue Two California Plaza Suite 3400 Los Angeles, CA 90071-3427	<b><i>Co-counsel for Defendant Impac</i></b> Venable LLP G. Stewart Webb, Esq. 750 E. Pratt Street Suite 900 Baltimore, MD 21202
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32. Any Class member who does not make his, her, or its objection in the manner provided above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Final Judgment, including any award of attorneys' fees and expenses, or any other relevant matters unless otherwise ordered by the Court, and shall also be foreclosed from appealing from any judgment or order entered in the Action.

**The Final Hearing**

33. As set forth above, the Court has scheduled a Final Hearing on December 5, 2022, at 2:00 p.m., to be conducted by remote electronic means. The Final Hearing is open to the public and may be joined using the following link:

**Join ZoomGov Meeting**

<https://mdcourts.zoomgov.com/j/1609081730?pwd=NjVQS3VKcGMUUmVTL3prWGFLVUIMUT09>

Meeting ID: 160 908 1730

Passcode: 17395955

**One tap mobile**

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+16468287666,,1609081730# US (New York)

**Dial by your location**

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

+1 551 285 1373 US

+1 669 216 1590 US (San Jose)

833 568 8864 US Toll-free

Meeting ID: 160 908 1730

34. It is not necessary for any Class member, or any other shareholder of Impac, to appear at the hearing. The Class will be represented at the hearing by Class Counsel, John B. Isbister and Daniel S. Katz of Tydings & Rosenberg LLP.
35. Any Class member may appear at the hearing, in person or by counsel, and show cause why the Proposed Final Relief should or should not be entered, why an award of attorneys' fees and expenses to Class Counsel or plaintiff Timm should or should not be granted as requested, and/or why Incentive Awards should or should not be granted as requested. However, no Class member shall be heard or entitled to contest these issues unless the Class member files and serves a written objection at least thirty (30) days before the hearing, as provided above, or is granted leave of the Court to proceed without filing a timely objection.

**Inquiries**

36. For a more detailed statement of the matters involved in the proposed Final Judgment, you are referred to the pleadings and to all other papers and documents filed with the Court in the Action, which may be inspected during normal business hours at the Circuit Court for Baltimore City, 111 N. Calvert Street, Baltimore, MD 21202. Additionally, the Complaints and primary papers, including the Court's opinions and orders are available for review on the Class Notice website at [www.ImpacMortgageHoldingsSeriesBPreferredClassAction.com](http://www.ImpacMortgageHoldingsSeriesBPreferredClassAction.com) and defendant Impac's website at <https://ir.impaccompanies.com/series-b-preferred-class-action>.

**IF YOU HAVE ANY QUESTIONS ABOUT THIS CLASS NOTICE, THIS ACTION, THE PROPOSED FINAL JUDGMENT, OR THE FINAL HEARING, YOU SHOULD CONSULT YOUR OWN COUNSEL OR DIRECT THEM TO PLAINTIFFS' CLASS COUNSEL, JOHN B. ISBISTER, DANIEL S. KATZ, OR TYDINGS & ROSENBERG LLP, IN THIS ACTION, AT THE ADDRESS SET FORTH ABOVE. PLEASE DO NOT CONTACT THE CLERK OF THE COURT.**

**THIS CLASS NOTICE WAS APPROVED BY THE CIRCUIT COURT FOR BALTIMORE CITY, JUDGE LAWRENCE P. FLETCHER-HILL, FOR USE IN PROVIDING NOTICE TO MEMBERS OF THE PLAINTIFF CLASS.**