

T 410-244-7614
F 410-244-7742
mjwilson@venable.com

February 1, 2022

BY HAND

Clerk's Office
Circuit Court for Baltimore City
111 North Calvert Street
Courthouse East, Room 462
Baltimore, MD 21202

Re: ***Curtis J. Timm and CAMAC Fund LP v. Impac Mortgage Holdings, Inc.***
Case No. 24-C-11-008391

Dear Clerk:

Enclosed for filing in the above-referenced civil action please find: (1) the original and two copies of Defendant Impac Mortgage Holdings, Inc.'s Response to Plaintiffs' January 18, 2022 Opposing Briefs on Class Certification and Other Relief (the "Response"), and (2) an Appendix of Unpublished Authorities cited in the Response. Please file the original copy of the Response and the Appendix of Unpublished Authorities and then date-stamp the two additional copies of the Response and return them to the waiting messenger for delivery to the Court.

Thank you for your attention to this matter.

Very truly yours,



Michael J. Wilson

Enclosures

cc: Hon. Lawrence P. Fletcher-Hill
All Counsel of Record (by email & regular mail)

T 410-244-7614
F 410-244-7742
mjwilson@venable.com

February 1, 2022

BY HAND

The Honorable Lawrence P. Fletcher-Hill
Circuit Court for Baltimore City
Cummings Courthouse, Room 208
111 North Calvert Street
Baltimore, MD 21202

Re: *Curtis J. Timm and CAMAC Fund LP v. Impac Mortgage Holdings, Inc.*
Case No. 24-C-11-008391

Dear Judge Fletcher-Hill:

On behalf of Defendant Impac Mortgage Holdings, Inc., I enclose herewith a date-stamped copy of its Response to Plaintiffs' January 18, 2022 Opposing Briefs on Class Certification and Other Relief (the "Response"), the original of which was filed earlier today with the Clerk's office. I also enclose a copy of the Appendix of Unpublished Authorities cited in the Response, which was also filed with the Clerk's office.

Thank you for your consideration of this matter.

Very truly yours,



Michael J. Wilson

Enclosures

cc: All Counsel of Record (by email & regular mail)

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CURTIS J. TIMM, on behalf of himself)
and all persons similarly situated,)

Plaintiff,)

Camac Fund LP, on behalf of itself and)
all persons similarly situated,)

Intervener)

Plaintiff,)

v.)

IMPAC MORTGAGE HOLDINGS,)
INC.,)

Defendant.)

CASE NO. 24-c-11-008391

**IMPAC MORTGAGE HOLDING'S
RESPONSE TO PLAINTIFFS' JAN.
18, 2022 OPPOSING BRIEFS ON
CLASS CERTIFICATION AND
OTHER RELIEF**

Hearing: February 18, 2022

Time: 2:00 p.m. EST

Judge: Hon. Lawrence P. Fletcher-Hill

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. CLASS CERTIFICATION AND RELATED PROCEEDINGS	1
A. Class Certification under Rule 2-231(c)(2).....	1
B. Class Definition	2
C. Attorney’s Fees from Future Dividends	4
D. Class Representative and Class Counsel.....	4
E. Cost of Class Notice.....	4
III. NO CLAIM EXISTS IN THIS CASE FOR RECOVERY OF ALL ACCRUED DIVIDENDS after 2009	5
A. Timm Waived or Abandoned Any Claim for Accrued Dividends After 2009.....	5
B. Series B Preferred Stockholders Are Not Entitled to Dividends Under the 2004 Articles, Except “As and When” Declared by Impac’s Board of Directors in the Exercise of Business Judgment.....	9

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Allison v. Citgo Petroleum Corp.</i> , 151 F.3d 402 (5th Cir. 1998)	2
<i>Baron v. Allied Artists Pictures Corp.</i> , 337 A.2d 653 (1975)	10
<i>Beck v. Mangels</i> , 100 Md. App. 144 (1994)	7, 8
<i>Berry v. Schulman</i> , 807 F.3d 600 (2015)	2
<i>Com. v. Lutheran Hospital of Maryland, Inc.</i> , 298 Md. 651 (1984)	8
<i>Federal Land Bank, Inc. v. Esham</i> , 43 Md. App. 446 (1979)	8
<i>Gabelli & Co. v. Liggett Group, Inc.</i> , 479 A.2d 276 (Del. 1984)	11
<i>Giacopelli v. Guiducci</i> , 2007 NYLJ LEXIS 3067 *5-11 (Supr. Ct. N.Y. May 17, 2007)	11
<i>Giammalvo v. Sunshine Mining Co.</i> , 1994 Del. Ch. LEXIS 6 (1994)	10, 11
<i>Impac Mortg. Holdings, Inc. v. Timm</i> , 245 Md. App. 84 (2019)	7
<i>Klaenberg v. State</i> , 355 Md. 528 (1999)	7
<i>Renbaum v. Custom Holding, Inc.</i> , 386 Md. 28 (2004)	9
<i>Wilcom v. Wilcom</i> , 66 Md. App. 84, 97 (1986)	3
<i>Wittman v. Crooke</i> , 120 Md. App. 369 (1998)	10

Other Authorities

Federal Rule of Civil Procedure 23(b)(2)	1, 2
Maryland Rule 2-231(c).....	1
Maryland Rule 8-504	7, 8
Md. Code Ann., Corp. & Ass'ns § 2-405.1	10

I. INTRODUCTION

Impac Mortgage Holdings, Inc. (“Impac”) hereby responds to the January 18, 2022 positions taken by Plaintiffs Camac Fund LLC (“Camac”) and Curtis Timm (“Timm”) regarding class certification and other relief. In order to avoid repetition, Impac incorporates by reference the points in its own January 18 brief, which addresses many of the issues raised in Plaintiffs’ simultaneous January 18 filings. Impac uses the defined terms set forth in its January 18 brief.

II. CLASS CERTIFICATION AND RELATED PROCEEDINGS

Impac agrees with the positions taken by Camac and opposes certain of the positions advanced by Timm. The points of agreement and disagreement are set forth below.

A. Class Certification under Rule 2-231(c)(2)

All parties agree that certification of a non-opt out class of Series B Preferred under Rule 2-231(c)(2) is appropriate with respect to the following final judgments: (1) the declaration that the Series B 2004 Articles remain in effect (Count I), (2) the declaration quantifying Impac’s obligation to pay dividends as a result of its 2009 Repurchase (Count IV), and (3) the injunction requiring Impac to hold a special meeting for the Series B Preferred to elect two directors. In this case, it is appropriate to certify a mandatory, non-opt out class under Rule 2-231(c)(2) because Impac “acted ... 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 2-231(c)(2). The Rule confers no opt out option for class members because there are no individualized issues that must be separately tried.

The fact that the judgment in this case requires Impac to pay the 2009 Dividends based on its 2009 Repurchase is not “damages” of a kind that would require allowing opt outs under Rule 2-231(c)(3). Although we found no Maryland cases directly on point, federal courts ruling on certification under Federal Rule of Civil Procedure 23(b)(2)—on which Maryland Rule 2-231(c)(2) is based—are instructive. Federal courts widely hold that where monetary relief is “incidental” and flows from injunctive or declaratory equitable relief, then a mandatory, non-opt

out class is appropriate. For example, in *Berry v. Schulman*, 807 F.3d 600, 609 (2015), the Fourth Circuit affirmed certification of a settlement class under Federal Rule of Civil Procedure 23(b)(2) for injunctive relief arising out of alleged violations of the Federal Fair Credit Reporting Act—even though the settlement contemplated a class-wide release of incidental statutory damages. The Court found that both the injunctive relief and statutory damages were “uniform” as to all class members. *Id.* at 609-10. That is because the statutory damages would have been set by “rote calculation.” Federal courts routinely hold that if monetary relief is “non-individualized” and “incidental” to the injunctive or declaratory remedies, then certification of a non-opt out class is appropriate. *Id.* at 611-12 (citing cases); *see also Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 411, 415 (5th Cir. 1998) (same, collecting cases).

Here, the July 16, 2018 Partial Final Judgment against Impac for payment of the 2009 Dividends is incidental to the declaration that the Series B 2004 Articles remain in effect. The dividends are a fixed, rote calculation, not subject to individualized determination among the holders of the Series B Preferred. The 2009 Dividends are based on the Court’s declaratory judgment that the Series B 2004 Articles required Impac to declare and pay or set aside all accumulated dividends “for past dividend periods and the then current dividend period,” which the Circuit Court determined to be three quarters. Dk. 165/0 (Timm Dec. 17 Br., Ex. A (2004 Articles ¶ 3(d))). There are 665,592 of Series B Preferred shares outstanding since the 2009 Repurchase. Three quarters of dividends on 665,592 shares is a mathematical calculation. Impac’s dividend obligation is a fixed amount per share—whether or not any given share has changed hands since 2009. The *only* issue to be decided is whether Impac must pay current stockholders as of a future record date, or pay former holders as of a specified past date.

B. Class Definition

Timm’s proposed class definition improperly excludes holders of Impac-affiliated Series B Preferred holders and former holders, as discussed in Impac’s January 18 brief (at 14-15). These exclusions make no sense in this case. Under established Maryland law, “[p]referential

stock rights are contractual in nature and therefore are governed by the express provisions of [the] ... Articles Supplementary.” Dk. 19/1 (1/28/13 Mem. Op. docketed 1/29/13 at 9). Therefore, Impac and its Series B Preferred holders are mutually bound by the July 16, 2018 Partial Final Judgment declaring the Series B 2004 Articles to be in effect, regardless of whether or not those holders are employees, officers, directors or agents of Impac. Likewise, the Judgment applies to all former holders of Series B Preferred. All are bound by the Circuit Court’s determination that the Series B 2004 Articles are and were in effect since June 29, 2009 and all bound by the determination of Impac’s obligation to pay three quarters of 2009 Dividends based on the 2009 Repurchase. All must also be bound by the Court’s upcoming determination of which group of current or former holders of Series B Preferred are entitled to those dividends.

Timm cites no authority for his proposed exclusions and, in any event, his proposed exclusions are unworkable. If the Court directs Impac to pay the 2009 Dividends to *current* stockholders as of a record date to be set, Impac will be contractually obligated to pay dividends on all shares of Series B Preferred owned by Impac-affiliated persons as of that record date. Any *former* holder of Series B Preferred who no longer owns the stock as of that record date will not be entitled to dividends. On the other hand, if the Court directs Impac to pay the 2009 Dividends to *former* holders of Series B Preferred who can prove their ownership as of some past date, Impac will be required to pay them to the exclusion of current holders who did not own their stock at that past date.¹ Either way the Court decides, the class notice will provide current and former holders with notice of the ruling and an opportunity to object and be heard before the ruling is made final and the case is dismissed. This is why Timm is wrong to limit the scope of the class. *All* current and former Series B Preferred holders are bound to the July 16, 2018 Partial

¹ As noted in Impac’s January 18 brief, all parties concur that the right to undeclared dividends travels with stock as it changes hands and, therefore, should be payable to the holders as of a record date to be declared in the future. *See Wilcom v. Wilcom*, 66 Md. App. 84, 97 (1986) (“[T]he dividend belongs to him who is the owner at the time it is declared.”).

Final Judgment and must be bound by any final declaration as to who among them is entitled to the 2009 Dividends.

C. Attorney's Fees from Future Dividends

Timm argues that Impac should be ordered to pay accrued dividends for all quarters after 2009 in order to assure that any plaintiff's attorney's fees that may be awarded out of future dividends are paid up front because it "is simply impractical to monitor the actions of Impac in perpetuity." Timm Jan. 18 Br. at 10. This argument is incorrect.² If the Court were to order that Impac must set aside any portion of any *future* dividends or other distributions on the Series B Preferred, Impac would not object. It is a simple ministerial task akin to an order for garnishment of wages. Contrary to Timm's argument, this task would not require ongoing oversight by the Court. The Court may retain jurisdiction should any disputes arise concerning future payments, but may rest assured that the lawyers looking for payment out of any future dividends, as well as the class representative and class counsel, will monitor the payments.

D. Class Representative and Class Counsel

Timm is not a suitable class representative and cannot serve as class counsel for the reasons stated in Impac's January 18 brief (at 16). Impac also agrees with the points made by Camac in its January 18 brief regarding Timm's qualifications. Camac and the Tydings firm, on the other hand, are well qualified for these respective roles and should be appointed.

E. Cost of Class Notice

Impac will agree to pay half of the cost of notice to the class, as defined by Camac, pursuant to the notice program proposed by Camac. Camac's counsel requested this compromise of Impac's position that Plaintiffs (or the common fund) should bear the entire cost. Impac Jan. 18 Br. at 17-18. Impac does not condition this compromise on appointment of Camac or its counsel as class representative or class counsel. Impac reserves its right to withdrawal the

² Timm's contention that Impac is obligated to pay all accrued dividends after 2009 is incorrect for other reasons, as addressed in Impac's Jan 18 brief at 18-23 (discussing *res judicata* and collateral estoppel) and further addressed in Part III below.

compromise, however, if the judicially approved notice program is more onerous than proposed by Camac, or includes notice that Impac's dividend obligation exceeds the three quarters of 2009 Dividends (which would be incorrect).

III. NO CLAIM EXISTS IN THIS CASE FOR RECOVERY OF ALL ACCRUED DIVIDENDS AFTER 2009

Timm's demand for an order compelling Impac to pay all accrued dividends after 2009 and prejudgment interest is barred by *res judicata* and collateral estoppel for the reasons set forth in Impac's January 18 brief (at 2-14 (Factual and Procedural History) and 18-23 (Argument)). Below, Impac addresses an additional issue raised by Timm in his January 18 brief.

A. Timm Waived or Abandoned Any Claim for Accrued Dividends After 2009.

Timm contends that the decision of the Court of Special Appeals ("CSA") in this case, subsequently affirmed by the Court of Appeals, "makes clear that the question of whether damages in the form of dividend payments after 2009 would be owed has not been decided and is an outstanding issue for this court to decide." Timm Jan. 18 Br. at 9-10. To the contrary, in briefs and motions filed with the Circuit Court in 2018, Timm made *six demands for "damages" consisting of all dividends accrued after 2009*, and the Circuit Court issued *five Orders denying all of Timm's demands*. See Impac Jan. 18 Br. at 9-12 (and related docket references).³

³ For ease of reference, Timm's first demanded a trial on damages for all accrued unpaid dividends after 2009 in his Untitled Motion of February 26, 2018 (Dk. 126/0 (2/26/18 Untitled Motion at 9, 15-19, docketed 3/12/18), then repeated the demand in his March 16, 2018 brief on remedies (Dk. 128/0 (3/16/18 Memorandum of Law at 6-7 ¶¶ 4, 8), and repeated it again in his March 30 brief on remedies (Dk. 126/7 (3/30/18 Response to Defendants' and Camac Brief at 12 & 13, docketed 4/3/18)). The Circuit Court rejected all of these demands by entering judgment on the Count IV remedy for the 2009 Repurchase limited to three quarters of 2009 Dividends, noting in its Memorandum Opinion that Timm has failed to "explain the basis for" his demand for *all* accrued dividends. (Dk. 132/0 (7/16/18 Mem. Op., at 4, docketed 7/17/18); Dk.132/2 (7/16/18 Order, docketed 7/17/18); Dk. 132/4 (7/24/18 Correction of Order, docketed 7/26/18)). The Circuit Court issued a further separate order on July 16, 2018 expressly denying Timm's Untitled Motion demanding all accrued dividends. (Dk.132/2 (7/16/18 Order, docketed 7/17/18)). Timm demanded yet another ruling on the issue by letter of August 4, 2018 (Dk. 134/0 (8/4/18 Correspondence, docketed 8/8/18)), which the Circuit Court denied by Order of September 5, 2018 (Dk. 134/1 (9/5/18 Order, docketed 9/7/18)). Timm then twice demanded a

In his cross appeal to the CSA, Timm failed to present any legal or factual argument that the Circuit Court had erred in making any of these rulings denying his demands for accrued dividends. To recap, Timm filed an Untitled Motion in February 2018 demanding a trial on “damages” including all accrued dividends, followed by two briefs in March 2018 on remedies demanding all accrued dividends. *See* note 3, above. After a hearing in April 2018, the Circuit Court rejected Timm’s demands in its July 16, 2018 Partial Final Judgment and accompanying Memorandum Opinion, and specifically denied Timm’s Untitled Motion by separate Order issued on July 16, 2018. The Circuit Court’s subsequently denied Timm’s letter request for a further ruling on his demand for accrued dividends, and denied his two demands for a bond to secure payment of all accrued dividends pending appeal. *Id.*

Timm did not even designate three of these Circuit Court’s Orders in his Record Extract (“RE”) filed in with the CSA. A copy of the table of contents of the RE is attached. The RE includes only the Circuit Court’s July 16, 2018 Partial Final Judgment Order and accompanying Memorandum Opinion (E.2123, E.2138, E.2140) and its Order granting Impac’s Motion to Stay (E.2141)—but does not include the Circuit Court’s July 16, 2018 separate Order denying Timm’s Untitled Motion, its September 5, 2018 Order denying Timm’s letter request for another ruling, and its October 29, 2018 Order rejecting his demand for a bond securing all accrued dividends pending appeal. Timm did not effectively challenge any of these judgments and orders on appeal and thus, the issue stands resolved as a matter of law, as set forth below.

Contrary to Timm’s assertion, the CSA did not “make clear” that the issue of accrued dividends after 2009 was undecided and remained outstanding in the Circuit Court. Rather, the CSA noted Timm’s demands for accrued dividends in his appellate brief and questioned whether Timm’s demand for dividends “had even been raised,” noting there is “no decision for us to

bond to secure Impac’s payment of *all* accrued dividends pending appeal—first, on August 21, 2018 in opposition to Impac’s Motion to Stay the election of directors (Dk. 135/2 (8/21/18 Timm Opp.)) and, second, in Timm’s October 2, 2018 motion for a bond (Dk. 145/0 (10/2/18 Motion, docketed 10/9/18)). The Circuit Court denied the bond in two separate Orders. (Dk. 135/5 (9/5/18 Order on Stay at 4); Dk. 145/2 (10/29/18 Order on Bond, docketed 10/30/18)).

review,” and that the Circuit Court “did not expressly identify the question of whether damages in the form of dividend payments after 2009 would be owed ... as an outstanding issue[.]” *Impac Mortg. Holdings, Inc. v. Timm*, 245 Md. App. 84, 126 & n. 23 (2019). That is because the dividend-related arguments in Timm’s appellate brief were unaccompanied by any citation to the multi-thousand page RE, did not identify any erroneous decision by the Circuit Court, and did not cite any legal authority whatsoever on point. He did not seek to correct the CSA’s understanding that no decision by the Circuit Court had been presented for its review. He did not seek to augment the RE with all of the rulings against him. He did not assign any error to the Circuit Court’s ruling on Count IV that Impac owed only three quarters of 2009 Dividends arising out of the 2009 Repurchase. He did not seek reconsideration in the CSA. He did not seek review by the Maryland Court of Appeals.

As a consequence of Timm’s failures on appeal, he waived and abandoned any claim that the Circuit Court erred in denying his demands for all accrued dividends after 2009. Two of the leading cases on point are cited in the CSA’s opinion—*Klauenberg v. State*, 355 Md. 528, 552 (1999) and *Beck v. Mangels*, 100 Md. App. 144, 149 (1994). The CSA held that Timm had waived his appeal on Counts II and III by “fail[ing] to submit sufficient argument,” “cit[ing] no case law” and “develop[ing] no legal argument as to the grounds upon which the circuit court erred in granting summary judgment in Impac’s favor.” *Impac*, 245 Md. App. at 117 & 125. The CSA cited *Klauenberg* and *Mangels* as well as Timm’s failure to comply with the Rule 8-504(a)(6) requiring “[a]rgument in support of the party’s position on each issue.” *Id.*

Klauenberg held that an appellant waived appeal of the trial court’s denial of his motion for a mistrial. The appellant “failed to present an argument in his brief” and the record reflected that he had argued for a mistrial on different basis than he seemed to assert on appeal. The appellant had merely cited testimony that he did not like and asserted that his counsel “made a motion for mistrial...which was denied by the court.” 355 Md. at 551-52. The appellant—like Timm—made no argument explaining *why* the trial court had erred. The Court found that he had

waived the argument, holding that “arguments not presented in a brief or not presented with particularity will not be considered on appeal” and are waived. *Id.*

Similarly, in *Beck*, the Court held that the appellant waived an issue that he raised, but failed to support with substantial argument as required by Rule 8-504(a). As the Court explained, the appellate rules “are mandatory and, therefore it is necessary for the appellant to present and argue all points of appeal in his initial brief Our function is not to scour the record for error once a party notes an appeal and files a brief.” 100 Md. App. at 149 (quotation omitted).

Issues that are waived on appeal are deemed to “have been determined for purposes of [the] case.” *Health Services Coast review Com. V. Lutheran Hospital of Maryland, Inc.*, 298 Md. 651, 664 (1984) (“a question not presented or argued in an appellant’s brief is waived or abandoned and, therefore, not properly preserved for review”). *See also Federal Land Bank, Inc. v. Esham*, 43 Md. App. 446, 457-58 (1979) (failure of appellant to “pinpoint the errors raised on appeal and to support the contentions with well-reasoned legal argument” violates the Rules results in waiver of any challenge to the rulings).

Here, Timm made bare contentions in his appellate brief that Impac was obligated to pay all accrued dividends, but he did not point the CSA to any decisions of the Circuit Court that, he contended, were made in error on this issue; nor did he develop any substantial argument, or cite any case authority. *See* Timm’s CSA opening brief attached to Impac’s Jan. 18, 2022 brief. Thus, Timm waived any error by the Circuit Court in denying his demands for accrued dividends, and the matter is deemed to “have been determined” against him in this case. *See Health Services*, 298 Md. at 664. Accordingly, the remedies flowing from the Circuit Court’s declaration that the Series B 2004 Articles remain in effect have been fully and finally determined and affirmed on appeal, except for the narrow issue of to whom the 2009 Dividends (three quarters) must be paid. The principles of *res judicata* and collateral estoppel prevent Timm from attempting now to assert a claim for other remedies. *See* Impac Jan. 18 Br. at 18-23.

B. Series B Preferred Stockholders Are Not Entitled to Dividends Under the 2004 Articles, Except “As and When” Declared by Impac’s Board of Directors in the Exercise of Business Judgment

Although Timm’s claim for accrued dividends after 2009 is barred by the doctrines of waiver, *res judicata* and collateral estoppel, it may be helpful for this Circuit Court to have a high level overview of what Timm *would have been required to show* if his dividend claim had been timely and effectively asserted in this case (which it was not).

As noted, the dividend rights of the Series B Preferred are contractual and set forth in the 2004 Articles. Dk. 19/1 (1/28/13 Mem. Op. docketed 1/29/13 at 9). Those Articles provide:

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 preferred cash dividends at the rate of 9.375% ... per annum....Such dividends shall be cumulative ... and shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31[.]

Timm Dec. 17 Br., Ex. A, 2004 Articles ¶ (d)(a) (emphasis added). In the voting rights section, the Series B holders are entitled to demand a special meeting for election of two directors if dividends are “in arrears for six or more quarterly periods.” *Id.* 2004 Articles ¶ 6(b).

It is well established that the decision to declare dividends rests in the sound discretion of a company’s board of directors. As stated by the Maryland Court of Appeals: “[T]he decision to distribute dividends is a discretionary act by the board of directors in most cases and may be subject to review under the business judgment rule.” *Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 55 & n. 22 (2004) (citing *Gabelli & Co. v. Liggett Group, Inc.*, 479 A.2d 276, 280 (Del. 1984), discussed below, and James J. Hanks, *Maryland Corporation Law*, 5.10, 5.7 (“observing that one of the ‘fundamental issues’ of corporation law is the ‘corporation’s right’ to pay (or not pay) dividends.”)). The Delaware Court of Chancery found it “obvious” that the *exact* language present in the Series B 2004 Articles entitling holders to dividends—*i.e.*, “when and as authorized by the Board of Directors”—“reposes a discretion to [the company’s] board to declare

preferred dividends.” *Baron v. Allied Artists Pictures Corp.*, 337 A.2d 653, 658 (1975); *see also* *Giammalvo v. Sunshine Mining Co.*, 1994 Del. Ch. LEXIS 6, *12 (1994) (citing *Baron* and holding that the same operative dividend language confers discretion upon the board of directors to issue dividends and “does not entitle the Preferred Stockholders to a mandatory dividend”).

Thus, a decision by Impac’s Board of Directors *not* to declare Series B Preferred dividends would be a classic business judgment. Under the historic business judgment rule, codified at Md. Code Ann., Corp. & Ass’ns § 2-405.1, directors are *presumed* to act in a manner consistent with valid business judgment: “Under the Business Judgment Rule, there is a presumption that directors of a corporation acted in good faith and in the best interest of the corporation. In order to rebut a business judgment claim, the party challenging the validity of a board’s actions must produce evidence sufficient to rebut the presumption[.]” *Wittman v. Crooke*, 120 Md. App. 369, 376 (1998) (quotations and citations omitted).

Further, under Maryland law, the plaintiff’s burden of rebuttal starts at the pleading stage. Where, as here, the corporate directors’ conduct is authorized, then “*a showing must be made of fraud, self-dealing or unconscionable conduct to justify judicial review. This presents an issue of law rather than of fact.*” *Id.* (emphasis added) (affirming dismissal for failure to state a claim). Thus, the first hurdle that Timm would have faced, had he sought to require the Impac Board of Directors to declare dividends or challenged a decision not to declare dividends, would be a motion to dismiss based on the presumption of valid business judgment. The standard for rebutting the presumption and stating a claim for abuse of discretion is high, as noted in *Wittman*—*i.e.*, facts sufficient to plead fraud or self-dealing.

Assuming for the sake of illustration, however, that Timm had brought such a claim and prevailed at the pleading stage, he then would have needed to develop evidence of fraud or abuse by Impac’s Board of Directors in deciding to devote corporate assets to purposes other than distribution to the holders of Series B Preferred. Courts have not shown much sympathy to stockholders who seek judicial intervention to extract corporate assets as dividends over a board’s decisions to put the assets back into the corporation or use them for other purposes.

For example, in *Gabelli & Co. v. Liggett Group, Inc.*, 479 A.2d 276 (Del. 1984) (cited in Maryland's *Renbaum* case, above), the Delaware Supreme affirmed summary judgment in favor of the defendant Board of Directors in an action by stockholders to compel a declaration of dividends, finding no abuse of discretion by the Board. *Id.* at 280. The preferred stockholders of a target company in a merger complained that the target company had failed to issue a quarterly dividend in advance of the merger, as it had done in the past. The Court found that the plaintiffs failed to establish any "right" to the dividends, which were discretionary, and failed to meet their burden to demonstrate any "oppressive or fraudulent abuse of discretion." *Id.* at 279-81. *See also Giammalvo, supra*, 1994 Del. Ch. LEXIS 6, at *21-29 (granting summary judgment in favor of directors regarding decision not to issue dividends, where plaintiff stockholder failed to rebut the presumption of good faith business judgment); *Giacopelli v. Guiducci*, 2007 NYLJ LEXIS 3067 *5-11 (Supr. Ct. N. Y. May 17, 2007) (denying plaintiff stockholder's motion for summary judgment to compel the board to distribute stockholder dividends, canvassing New York law).

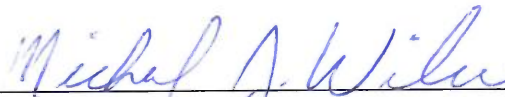
In the present case, Timm's demand for a "trial" on damages and accrued dividends is empty posturing. He would be in no position whatsoever to challenge any decision of Impac's Board of Directors regarding management of the accrued Series B dividends. Discovery closed in this case in 2015. No discovery was taken on any "damages" theory. No evidence was developed as to Impac's financial condition at any point since the case was filed. Timm's musings that Impac has ability to pay are irrelevant and based on his own untutored reading of periodic SEC filings. *See Timm Dec. 17 Br.* at 19. There is no evidence regarding whether, when or how Impac's Board of Directors has deliberated over use of corporate assets for competing corporate needs, or what to do about accumulated Series B dividends. Indeed, it was only a few months ago, on July 15, 2021, when the Maryland Court of Appeals issued its decision affirming judgment for plaintiffs on the Series B voting rights. How and when to address the accrued Series B dividends is up to the Board of Directors and is not at issue here.

Dated: February 1, 2022

Respectfully submitted,



TROUTMAN PEPPER HAMILTON SANDERS LLP
Pamela S. Palmer (*admitted pro hac vice*)
350 South Grand Avenue
Two California Plaza, Suite 3400
Los Angeles, CA 90071
Tel: 213.928.9800
pamela.palmer@troutman.com



G. Stewart Webb, Jr.
Michael Wilson
VENABLE LLP
750 East Pratt Street, Suite 900
Baltimore, Maryland 21202
gswebb@venable.com

*Attorneys for Defendant
Impac Mortgage Holdings Inc.*

CERTIFICATE OF SERVICE

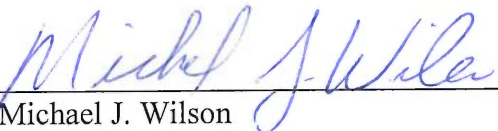
I HEREBY CERTIFY that on this 1st day of February, 2022, a true and correct copy of the foregoing document titled Impac Mortgage Holding's Responding Position Regarding Class Certification Motions and Other Issues was served upon counsel of record via United States Mail to the following:

Thomas C. Costello
Anne L. Preston
Costello Law Group
409 Washington Avenue, Suite 410
Towson, Maryland 21204
Tel: (410) 832-8800

Attorneys for Plaintiff Curtis Timm

John B. Isbister
Daniel S. Katz
TYDINGS & ROSENBERG LLP
100 E. Pratt Street, Suite 901
Baltimore, Maryland 21202
Tel: (401) 752-9700

Attorneys for Plaintiff Camac Fund LP



Michael J. Wilson

EXHIBIT 1

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2018

No. 2119

IMPAC MORTGAGE HOLDINGS, INC.,

APPELLANT,

v.

CURTIS J. TIMM, *et al.*,

APPELLEES.

ON APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY
(The Honorable W. Michel Pierson)

RECORD EXTRACT (I OF III)

G. Stewart Webb, Jr.
(GSWebb@venable.com)
Mitchell Y. Mirviss
(MYMirviss@Venable.com)
VENABLE LLP
750 E. Pratt Street, Suite 900
Baltimore, Maryland 21202
T: (410) 244-7400
F: (410) 244-7742

Pamela S. Palmer
(palmerp@pepperlaw.com)
PEPPER HAMILTON LLP
350 South Grand Avenue
Two California Plaza
Suite 3400
Los Angeles, California 90071
T: (213) 928-9819
F: (866) 976-8432

ATTORNEYS FOR APPELLANTS

**RECORD EXTRACT
TABLE OF CONTENTS**

VOLUME I

	<u>Page</u>
Docket Entries	E.1
Transcript of Record	E.35
Plaintiff Timm’s Class Action Complaint	E.38
Plaintiff Timm’s Opposition to Defendants’ Motion to Dismiss (pp. 1, 17-22)	E.69
Memorandum Opinion and Order Granting In Part Defendants’ Motion to Dismiss/Summary Judgment	E.77
Memorandum Opinion and Order Denying Motion to Revise January 28, 2013 Order	E.119
Answer and Affirmative Defenses of Defendant Impac Mortgage Holdings, Inc.	E.134
Declaration of Stephan Peers in Support of Defendant Impac’s Motion for Summary Judgment	E.186
Declaration of Katherine Blair in Support of Defendant Impac’s Motion for Summary Judgment	E.187
Blair Declaration Exhibit 1 — April, 2004 email chain re: Additional Information on REIT Preferred	E.195
Blair Declaration Exhibit 2 — April, 2004 email chain re: Annaly – Final print PDF of final pro sup with base	E.207
Blair Declaration Exhibit 3 — April, 2004 email chain re: REIT Preferred Transaction	E.236
Declaration of William G. Farrar in Support of Defendant Impac’s Motion for Summary Judgment	E.258

Farrar Declaration Exhibit 1 — May 25, 2004 Underwriting Agreement for 2,000,000 Shares of Impac Mortgage Holdings, Inc. 9.375% Series B Cumulative Redeemable Preferred Stock Liquidation Preference \$25.00 Per Share.....	E.264
Farrar Declaration Exhibit 2 — MFA Mortgage investments, Inc. Articles Supplementary Series A Cumulative Redeemable Preferred Stock.....	E.298
Farrar Declaration Exhibit 3 — MFA Mortgage Investments, Inc. Prospectus Supplement of 2,000,000 Shares of 8.5% Series A Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.308
Farrar Declaration Exhibit 4 — Impac Mortgage Holdings, Inc. Articles Supplementary 9.375% Series B Cumulative Redeemable Preferred Stock ..	E.379
Farrar Declaration Exhibit 5 — Final Prospectus Supplement Impac Mortgage Holdings, Inc. 2,000,000 Shares 9.375% Series B Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.389
Farrar Declaration Exhibit 6 — Impac Mortgage Holdings, Inc. Articles Supplementary 9.125% Series C Cumulative Redeemable Preferred Stock .	E.463
Farrar Declaration Exhibit 7 — Impac Mortgage Holdings, Inc. Prospectus Supplement 4,000,000 Shares 9.125% Series C Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.464
Farrar Declaration Exhibit 8 — MFA Financial, Inc. Articles Supplementary of 8,050,000 Shares of 7.50% Series B Cumulative Redeemable Preferred Stock	E.465
Farrar Declaration Exhibit 9 — MFA Financial, Inc. Prospectus Supplement of 7,000,000 Shares of 7.50% Series B Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share)	E.489
Declaration of Richard Johnson in Support of Defendant Impac’s Motion for Summary Judgment	E.593

Johnson Declaration Exhibit 1 — April 2004 email chain re: Additional Information on REIT Preferred	E.597
Johnson Declaration Exhibit 2 — April, 2004 email chain re: Annaly – Final print PDF of final pro sup with base	E.609
Johnson Declaration Exhibit 3 — April, 2004 email chain re: REIT Preferred Transaction	E.638
Johnson Declaration Exhibit 4 — April 30, 2004 Minutes of the Board of Directors Meeting of Impac Mortgage Holdings, Inc.	E.660
Johnson Declaration Exhibit 5 — May 25, 2004 Minutes of the Board of Directors Meeting of Impac Mortgage Holdings, Inc.	E.676
Declaration of Phillip J. Kardis in Support of Defendant Impac’s Motion for Summary Judgment	E.681
Declaration of Katherine A. Rykken in Support of Defendant Impac’s Motion for Summary Judgment	E.687
Appendix A to Rykken Declaration: Voting Provisions in Selected Preferred Stock Offerings.....	E.697
Rykken Declaration Exhibit 18 — Impac Mortgage Holdings, Inc. Articles Supplementary 9.375% Series B Cumulative Redeemable Preferred Stock. .	E.715
Rykken Declaration Exhibit 19 — Impac Mortgage Holdings, Inc. Prospectus Supplement 7.625% Series B Cumulative Redeemable Preferred Stock Liquidation Preference \$25.00 Per Share).	E.716
Rykken Declaration Exhibit 20 — Underwriting Agreement Impac Mortgage Holdings, Inc. 2,000,000 Shares 9.375% Series B Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.744
Rykken Declaration Exhibit 21 — Impac Mortgage Holdings, Inc. Articles Supplementary 9.125% Series C Cumulative Redeemable Preferred Stock ..	E.745

Rykken Declaration Exhibit 22 — Impac Mortgage Holdings, Inc. Prospectus Supplement 4,000,000 Shares 9.125% Series C Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.756
---	-------

VOLUME II

Rykken Declaration Exhibit 23 — Offering Circular Impac Mortgage Holdings, Inc. Offer to Purchase For Cash 9.375% Series B Cumulative Redeemable Preferred Stock at Purchase Price of \$0.29297 Per Share and Shares 9.125% Series C Cumulative Redeemable Preferred Stock at a Purchase Price of \$0.28516 Per Share.....	E.787
Rykken Declaration Exhibit 24 — June 19, 2009 Impac Mortgage Holdings, Inc. Schedule 14A.....	E.872
Rykken Declaration Exhibit 25 — June 29, 2009 Impac Mortgage Holdings, Inc. Form 8-K.	E.876
Rykken Declaration Exhibit 29 — MFA Mortgage Investments, Inc. Articles Supplementary Series A Cumulative Redeemable Preferred Stock..	E.897
Rykken Declaration Exhibit 30 — MFA Mortgage Investments, Inc. Prospectus Supplement of 2,000,000 Shares of 8.5% Series A Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.898
Rykken Declaration Exhibit 31 — MFA Financial, Inc. Prospectus Supplement of 7,000,000 Shares of 7.50% Series B Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.899
Rykken Declaration Exhibit 32 — MFA Financial, Inc. Articles Supplementary of 8,050,000 Shares of 7.50% Series B Cumulative Redeemable Preferred Stock.	E.900
Class Action Complaint in Intervention by Plaintiff Camac Fund LP	E.901
Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment and Cross Motion for Summary Judgment.....	E.934

Exhibits to Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion
for Summary Judgment and Cross Motion for Summary Judgment

Exhibit 1 — Impac Mortgage Holdings, Inc. Articles Supplementary 9.375% Series B Cumulative Redeemable Preferred Stock	E.939
Exhibit 2 — January 14, 2015 Deposition of Curtis Timm (pp. 1, 31 – 33, 64, 91 – 92).....	E.949
Exhibit 3 — January 14, 2015 Deposition of Eric Shahinian (pp. 1, 37, 88, 106 – 108).....	E.957
Exhibit 4 — April 29, 2004 Resolutions of the Board of Directors of Impac Mortgage Holdings, Inc.....	E.964
Exhibit 5 — April 30, 2004 Minutes of the Board of Directors Meeting of Impac Mortgage Holdings, Inc.....	E.974
Exhibit 6 — January 7, 2015 Deposition of Katherine Blair (pp. 1, 41 – 44, 48 – 51, 62 – 63, 71 – 72, 80, 82 – 88, 92 – 98, 107, 116 – 122, 142 – 143).	E.978
Exhibit 7 — December 16, 2014 Deposition of William G. Farrar (pp. 1, 32 – 33, 39 – 41, 51, 52 – 54, 56, 59, 68 – 73, 117).....	E.1017
Exhibit 8 — December 18, 2014 Deposition of Phillip J. Kardis, Esquire (pp. 1, 27 – 29, 36 – 37, 78 – 83, 88, 102, 123).	E.1036
Exhibit 9 — May 19, 2004 Unanimous Written Consent in Lieu of Meeting of Board of Directors of Impac Mortgage Holdings, Inc.....	E.1052
Exhibit 10 — Impac Mortgage Holdings, Inc. Public Offering 2,000,000 Shares of 9.375% Series B Cumulative Redeemable Preferred Stock.....	E.1055
Exhibit 11 — December 11, 2014 Deposition of Stephan Peers (pp. 1, 25 – 28, 30 – 37).....	E.1074

Exhibit 12 — Final Prospectus Supplement Impac Mortgage Holdings, Inc. 9.375% Series B Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.1088
Exhibit 13 — Impac Mortgage Holdings, Inc. Articles Supplementary 9.125% Series C Cumulative Redeemable Preferred Stock.....	E.1162
Exhibit 14 — May 29, 2009 Impac Mortgage Holdings, Inc. Schedule 14A.	E.1173
Exhibit 15 — May 29, 2009 <i>Impac Announces Commencement of Offer to Purchase and Consent Solicitation for All Outstanding Preferred Stock</i>	E.1258
Exhibit 16 — June 17, 2009 <i>Impac Mortgage Holdings, Inc. Announces Update on Offer to Purchase and Consent Solicitation</i>	E.1261
Exhibit 17 — December 12, 2014 Deposition of William Scott Ashmore (pp. 1, 49 – 51, 54 – 55).	E.1265
Exhibit 18 — May 25, 2004 Underwriting Agreement Impac Mortgage Holdings, Inc. 2,000,000 Shares 9.375% Series B Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share).	E.1272
Exhibit 19 — Section 313.00 Voting Rights From the NYSE Listed Company Manual.	E.1306
Exhibit 20 — MFA Financial, Inc. Articles Supplementary of 8,050,000 Shares of 7.50% Series B Cumulative Redeemable Preferred Stock.....	E.1309
Exhibit 21 — MFA Mortgage Investments, Inc. Articles Supplementary Series A Cumulative Redeemable Preferred Stock.	E.1333
Exhibit 22 — September 30, 2009 Form 10-Q Impac Mortgage Holdings, Inc.....	E.1343
Exhibit 23 — December 31, 2009 Form 10-K Impac Mortgage Holdings, Inc.....	E.1346

Exhibit 24 — January 8, 2015 Deposition of Ronald Morrison (pp. 1, 74 – 75).....	E.1350
Appendix of Deposition Transcripts in Support of Defendant Impac’s Opposition to Plaintiffs’ Cross-Summary Judgment Motion and Reply in Support of Defendant’s Summary Judgment Motion	E.1354
Appendix Exhibit 1 — December 12, 2014 Deposition of William S. Ashmore (pp. 1 – 7, 9 – 10, 44 – 46, 51 – 55, 58).....	E.1357
Appendix Exhibit 2 — January 7, 2015 Deposition of Katherine Blair (pp. 1 – 9, 67 – 69, 97 – 99, 102 – 103, 125, 128, 144).....	E.1376
Appendix Exhibit 3 — December 16, 2014 Deposition of William G. Farrar (pp. 1 – 17, 26 – 28, 34 – 40, 45 – 48, 53 – 54, 57 – 58, 60 – 61, 65 – 70, 83 – 87, 101 – 102, 109 – 110, 116 – 120, 123 – 124).....	E.1397
Appendix Exhibit 4 — December 12, 2014 Deposition of Richard Johnson (pp. 1 – 11, 24, 30 – 34, 50, 60 – 65, 84, 87 – 89, 92).	E.1458
Appendix Exhibit 5 — December 18, 2014 Deposition of Phillip J. Kardis, Esquire (pp. 1 – 17, 19 – 21, 34 – 36, 41 – 46, 87 – 89, 93 – 95, 100 – 123, 127 – 129, 133 – 134).....	E.1488
Appendix Exhibit 6 — January 8, 2015 Deposition of Ronald Morrison (pp. 1 – 6, 62 – 64, 82 – 85, 87 – 88).	E.1544
Appendix Exhibit 7 — December 11, 2014 Deposition of Stephan Peers (pp. 1 – 8, 29 – 34, 54 – 56, 80 – 81, 83, 89 – 90)	E.1560

VOLUME III

Appendix Exhibit 8 — March 27, 2015 Deposition of Michael David Schiffer, Esquire (pp. 1 – 8, 40 – 48, 59 – 60, 63 – 64, 66 – 67, 89, 96 – 98, 101, 109 – 118, 122 – 123, 135 – 140, 143 – 147, 149 – 166, 202 – 203).	E.1583
---	--------

Appendix Exhibit 9 — January 14, 2015 Deposition of Eric Shahinian (pp. 1 – 6, 75 – 77, 81, 84, 102 – 104, 107 – 108, 167.	E.1655
Appendix Exhibit 10 — January 14, 2015 Deposition of Curtis Timm (pp. 1 – 24, 58, 66 – 69, 107, 130 -131)	E.1674
Declaration of Michael D. Schiffer in Support of Defendant Impac’s Reply in Support of Motion for Summary Judgment and Opposition to Plaintiffs’ Cross Summary Judgment Motion	E.1708
Voting Rights Provisions Maryland REIT Preferred Stock Issuances (2003 to Present) (Michael D. Schiffer)	E.1717
Declaration of Ronald M. Morrison in Support of Defendant Impac’s Reply in Support of Motion for Summary Judgment and Opposition to Plaintiffs’ Cross Summary Judgment Motion	E.1729
Morrison Declaration Exhibit 1 — June 2009 email chain re: Impac Preferred Tender.	E.1735
Morrison Declaration Exhibit 2 — October 7, 2009 Moisio email to R. Morrison and T. Taylor re: Transaction Details.	E.1738
Morrison Declaration Exhibit 3 — SDAT Notice that Articles Supplementary for Impac Mortgage Holdings, Inc. were received and approved on December 21, 1998 and copies of the Preferred B Articles Supplementary.	E.1740
Declaration of Justin Moisio in Support of Defendant’s Motion for Summary Judgment and in Opposition to Plaintiffs’ Cross Summary Judgment Motion.....	E.1765
Moisio Declaration Exhibit 1 — June 2009 email chain re: Impac.	E.1768
Moisio Declaration Exhibit 2 — June 2009 email chain re: Impac – 9AM Preliminary Final Update.	E.1771

Moisio Declaration Exhibit 15 — May 29, 2009 <i>Impac Announces Commencement of Offer to Purchase and Consent Solicitation for All Outstanding Preferred Stock</i>	E.1779
Moisio Declaration Exhibit 16 — June 17, 2009 <i>Impac Mortgage Holdings, Inc. Announces Update on Offer to Purchase and Consent Solicitation</i>	E.1782
Defendant Impac’s Notice of Errata re: Peers Declaration and Farrar Declaration Filed in Support of Summary Judgment	E.1787
[Replacement] Declaration of Stephan Peers in Support of Defendant Impac’s Motion for Summary Judgment	E.1790
Declaration of William G. Farrar in Support of Defendant Impac’s Motion for Summary Judgment	E.1795
[Replacement] Farrar Declaration Exhibit 6 — Impac Mortgage Holdings, Inc. Articles Supplementary 9.125% Series C Cumulative Redeemable Preferred Stock	E.1796
[Replacement] Farrar Declaration Exhibit 7 — Impac Mortgage Holdings, Inc. Prospectus Supplement 4,000,000 Shares 9.125% Series C Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 Per Share)	E.1797
Exhibits to Reply Memorandum in Support of Plaintiffs’ Cross Motion for Summary Judgment	
Exhibit 1 April 2004 email chain re: Additional Information on REIT Preferred	E.1798
Exhibit 2 January 14, 2015 Deposition of Eric Shahinian (pp. 29 – 30, 32 – 33, 40, 56, 85)	E.1810
Exhibit 3 December 18, 2014 Deposition of Phillip J. Kardis, Esquire (p. 29)	E.1818

Exhibit 4 January 7, 2015 Deposition of Katherine Blair (pp. 63, 80, 93 – 94, 142 – 143).....	E.1820
Exhibit 5 CoreSite Realty Corporation Articles Supplementary 7.25% Series A Cumulative Redeemable Preferred Stock.....	E.1827
Exhibit 6 Selected Pages From the March 27, 2015 Deposition of Michael David Schiffer, Esquire.	E.1846
Exhibit 7 Prospectus Supplement 4,000,000 Shares CoreSite 7.25% Series A Cumulative Redeemable Preferred Stock (Liquidation Preference \$25.00 per share)	E.1853
Exhibit 8 April 13, 2011 Vornado Realty Trust Prospectus Supplement.	E.1911
Exhibit 9 Prospectus Supplement 1,600,000 NorthStar Realty Finance 8.25% Series B Cumulative Redeemable Preferred Stock (Liquidation Preference \$25 Per Share).	E.1936
Exhibit 10 January 14, 2015 Deposition of Eric Shahinian (pp. 88, 107 – 108, 130).....	E.1969
Plaintiff’s Line with Corrected Exhibit No. 2 (December 16, 2014 Deposition of William G. Farrar pp. 29 – 30, 33, 40, 56, 85).....	E.1976
Memorandum Opinion and Order re: Motion for Summary Judgment, Cross Motion for Summary Judgment and Revision of Partial Summary Judgment	E.1984
Exhibits to Plaintiff Camac Fund LP’s Memorandum of Law filed March 16, 2018	
Exhibit 2 — Shahinian letter to Morrison re: Call of Special meeting; Notice of Nomination; and Demand to Inspect Books and Records of Impac Mortgage Holdings, Inc.)	E.2046
Exhibit 4 — Schedule to Rule 13e-4 Tender Offer Statement Under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934 for Impac Mortgage Holdings, Inc.)	E.2051

Exhibits to Plaintiff Camac Fund LP's Response to Defendant Impac's Opening Position Regarding Count I, IV, and VI Remedies (March 30, 2018)

Exhibit 1 — Excerpts from Plaintiff Camac Fund's Complaint, excerpts of various SEC filings, excerpts from Defendant Impac's Memorandum in Support of Motion to Dismiss, excerpts from Defendant Impac's Answer, excerpts from Defendant Impac's Answers to Interrogatories, excerpts from Plaintiff Camac Fund's Memorandum in Support of Motion for Summary Judgment, excerpts from Defendant Impac's Opposition to Motion for Class Certification, Declaration of Ron Morrison, Justin Moisio's email, and excerpts from Ron Morrison's deposition	E.2057
Exhibit 2 — Selected pages from Schedule 14A for Impac Mortgage Holdings, Inc... ..	E.2102
Exhibit 3 — Selected pages from Schedule 14A for Impac Mortgage Holdings, Inc... ..	E.2107
Exhibit 4 — Selected pages from Schedule 14A for Impac Mortgage Holdings, Inc... ..	E.2110
Memorandum Opinion re: Counts I, IV, Timm Count VI, Camac Count V, Entry of Partial Final Judgment, Class Certification.....	E.2123
Judgment Order	E.2138
Order Correcting Paragraph 5 of Order	E.2140
Order Granting Motion for Stay	E.2141
Transcript for June 12, 2015 (pp. 1-100, 102-111, 151-154).....	E.2145
Transcript for April 16, 2018 (pp. 28-76).....	E.2259
Rykken Declaration Exhibit 17 — December 23, 2003 Impac Mortgage Holdings, Inc. Form S-3 Registration Statement	E.2310