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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

APR 23 2012



**IN RE THORNBURG MORTGAGE, INC.
SECURITIES LITIGATION**

Case No. CIV 07-815 JB-WDS
MATTHEW J. DYKMAN
CLERK

THIS DOCUMENT RELATES TO:

ALL ACTIONS



4/21/12

AOB 4/21/12

~~PROPOSED~~ ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE

WHEREAS, (i) W. Allen Gage, individually and on behalf of J. David Wrather; Harry Rhodes; FFF Investments, LLC; Robert Ippolito, individually and as Trustee for the Family Limited Partnership Trust; and Nicholas F. Aldrich, Sr. (the "Lead Plaintiffs"); Betty L. Manning; John Learch; and Boilermakers Lodge 154 Retirement Plan (collectively with the Lead Plaintiffs, "Plaintiffs"), on behalf of themselves and the Class (as defined below); (ii) Garrett Thornburg, Larry A. Goldstone, and Clarence G. Simmons (the "Individual Defendants"); and (iii) Anne-Drue M. Anderson, David A. Ater, Joseph H. Badal, Eliot R. Cutler, Paul G. Decoff, Michael B. Jeffers, Ike Kalangis, Owen M. Lopez, Francis I. Mullin III, and Stuart C. Sherman (the "Dismissed Defendants" and together with the Individual Defendants, the "Settling Defendants"), have entered, by and through their respective counsel, into a settlement of the claims asserted in the above-captioned action (the "Litigation"), the terms of which are set forth in a Stipulation and Agreement of Settlement, dated March 28, 2012 (the "Stipulation"), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement of the claims alleged in the Consolidated Amended Class Action Complaint (the "Complaint") filed in the Litigation and, upon the Effective Date, the dismissal of them on the merits and with prejudice, upon the terms and conditions set forth in the Stipulation;

WHEREAS, Plaintiffs have voluntarily dismissed Thornburg Mortgage, Inc. ("TMI") from the Litigation with prejudice;

WHEREAS, the Individual Defendants and Dismissed Defendants have applied to the United States Bankruptcy Court for the District of Maryland, acting in *In re: TMST, Inc. f/k/a Thornburg Mortgage, Inc., et al.*, Case Nos. 09-17787, 17790-17792-DWK (Jointly

Administered under Case No. 09-17787), for entry of a Bankruptcy Court Order substantially in the form contemplated in the Stipulation; and

WHEREAS, the Court having read and considered the Stipulation, the proposed Notice of Pendency of Class Action, Proposed Settlement, Settlement Fairness Hearing and Motion for Attorneys' Fees and Expenses ("Notice"), the proposed Summary Notice of Pendency and Proposed Class Action Settlement ("Summary Notice"), the proposed Plan of Allocation of the Net Settlement Fund among Class Members ("Plan of Allocation"), the proposed form of the Proof of Claim and Release ("Proof of Claim"), the proposed form of Order and Final Judgment, and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 28th day of April, 2012, that:

1. Capitalized terms used herein have the meanings defined in the Stipulation.
2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Litigation is hereby preliminarily certified as a class action on behalf of all persons and entities who purchased or otherwise acquired TMI common stock and/or preferred stock in the open market and/or in or traceable to the Offerings between April 19, 2007 and March 19, 2008, inclusive and who were damaged thereby. Excluded from the Class are:
 - a. TMI, the Defendants, the directors and officers of TMI, members of the immediate families and their legal representatives, heirs, successors or assigns, and any entity in which any of the Defendants have or had a controlling interest; and

b. All Persons who file valid and timely requests for exclusion from the Class in accordance with this Order and the Notice.

3. The Court finds, preliminarily and for purposes of the Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (i) the number of Class Members is so numerous that joinder of all members of the Class is impracticable; (ii) there are questions of law and fact common to the Class Members; (iii) the claims of the Plaintiffs are typical of the claims of the Class they seek to represent; (iv) the Plaintiffs and their counsel have and will fairly and adequately represent and protect the interests of the Class; (v) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (vi) a class action is superior to other available methods for the fair and efficient adjudication of the Litigation.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of the Settlement only, Plaintiffs are certified as the class representatives on behalf of the Class and the Co-Lead Counsel previously selected by Lead Plaintiffs and appointed by the Court is hereby appointed as Co-Lead Counsel for the Class.

5. The Court preliminarily approves: (i) the Settlement of the Litigation as set forth in the Stipulation, and (ii) the proposed Plan of Allocation described in the Notice, subject to the right of any Class Member to challenge the fairness, reasonableness, and adequacy of the Settlement, the Stipulation or the proposed Plan of Allocation, and to show cause, if any exists, why a final judgment dismissing the Litigation based on the Stipulation should not be ordered herein after due and adequate notice to the Class has been given in conformity with this Order.

6. A hearing (the "Settlement Hearing" or "Final Settlement Hearing") pursuant to Federal Rule of Civil Procedure 23(e) shall be scheduled for a date at least ninety (90) days following the Notice Date (as defined in paragraph 13 below), in the United States District Court for the District of New Mexico, the Honorable James O. Browning presiding, and is hereby scheduled to be held before the Court on August 21, 2012 at 9:00 a.m., for the following purposes:

a. To finally determine whether the Litigation satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b);

b. To finally determine whether the Class should be certified for purposes of the Settlement; Plaintiffs should be appointed as representatives for the Class; and Co-Lead Counsel should be appointed as counsel for the Class;

c. To finally determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

d. To finally determine whether the Order and Final Judgment as provided under the Stipulation should be entered dismissing the Complaint on the merits and with prejudice as against the Settling Defendants and all persons and entities who are members of the defined Class, and to determine whether the release of the Released Parties as set forth in the Stipulation, should be ordered, along with a permanent injunction barring efforts to bring any claims extinguished by the release;

e. To finally determine whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

f. To consider the application of Co-Lead Counsel for an award of Attorneys' Fees and Expenses;

g. To consider any Class Members' objections to the Settlement; and

h. To rule upon such other matters as the Court may deem appropriate.

7. The Court reserves the right to change the location of the Final Settlement Hearing or adjourn the Final Settlement Hearing to a later date and to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement and dismissing the Complaint, on the merits and with prejudice as to the Settling Defendants, regardless of whether it has approved the Plan of Allocation or awarded Attorneys' Fees and Expenses.

8. The Court reserves the right to approve the Settlement at or after the Final Settlement Hearing with such modifications as may be agreed upon or consented to by the Settling Parties and without further notice to the Class where to do so would not impair Class Members' rights in a manner inconsistent with Rule 23 and due process of law.

9. Co-Lead Counsel have the authority to enter into the Stipulation on behalf of the Class and are authorized to act on behalf of the Class Members with respect to all acts or consents required by or that may be given pursuant to the Stipulation or such other acts that are reasonably necessary to consummate the Settlement.

10. Strategic Claims Services ("SCS") is appointed and approved as the Claims Administrator for the Settlement.

11. The Settlement Fund Administrator, or an agent thereof, is authorized and directed to (i) prepare and file all income tax and information returns required to be filed with respect to any interest or other income earned by the Settlement Fund, and provide the Settling Parties with copies of such returns; (ii) from the Settlement Fund, pay all federal, state, or local taxes that may apply to interest or income earned by the Settlement Fund, and provide the Settling Parties with documentation of all such payments; and (iii) to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof as contemplated by the Stipulation, without further order of the Court.

12. The Court approves the form, substance and requirements of (a) the Notice, (b) the Summary Notice, and (c) the Proof of Claim, all of which are exhibits to the Stipulation.

13. Co-Lead Counsel, through the Claims Administrator, shall cause the Notice and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first class mail, postage prepaid, within thirty (30) calendar days of the later of: (a) the entry of this Order or (b) the Bankruptcy Court Order becoming Final (the "Notice Date") to all Class Members who can be identified with reasonable effort by the Claims Administrator, including beneficial owners whose TMI common stock and/or preferred stock are held by banks, brokerage firms, or other nominees.

14. Co-Lead Counsel are authorized to pay all Notice and Administration Expenses from the Settlement Amount as set forth in the Stipulation.

15. Co-Lead Counsel, through the Claims Administrator, shall make all reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities who purchased TMI common or preferred stock during the Class Period. Such nominee

purchasers are directed to, within fifteen (15) days after the nominee receives the Notice, either (i) forward copies of the Notice and Proof of Claim to their beneficial owners or (ii) provide the Claims Administrator with list(s) of the names and addresses of the beneficial owners. In the event of the latter, the Claims Administrator is ordered to send, by first class mail, the Notice and Proof of Claim promptly to such beneficial owners on the list(s) received from the nominee. Additional copies of the Notice shall be made available to any record holder requesting the same for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of sending the Notice and Proof of Claim to beneficial owners, subject to further order of the Court with respect to any dispute concerning such compensation.

16. Co-Lead Counsel shall, at or before the Final Settlement Hearing, serve upon Settling Defendants' Counsel, and file with the Court, proof of mailing of the Notice and Proof of Claim, both to Class Members and to nominees.

17. Co-Lead Counsel, through the Claims Administrator, shall cause the Summary Notice, substantially in the form annexed hereto, to be published once in *Investor's Business Daily* and transmitted once over the *PR Newswire* within ten (10) calendar days after the Notice Date. Co-Lead Counsel shall, at or before the Final Settlement Hearing, serve upon Settling Defendants' Counsel and file with the Court proof of publication of the Summary Notice.

18. The forms and methods set forth herein of notifying the Class of the Settlement and its terms and conditions meet the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Exchange Act, 15 U.S.C. 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice

practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto. No Class Member will be relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Class Member failed to receive actual or adequate notice.

19. Any Class Member who wishes to participate in the distribution of the Net Settlement Fund after the Effective Date shall take the following action and be subject to the following conditions:

a. A properly completed and executed Proof of Claim must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked not later than one-hundred and eighty (180) calendar days from the Notice Date. Such deadline may be further extended by order of the Court. Each Proof of Claim shall be deemed to have been submitted when legibly postmarked (if properly addressed and mailed by first-class mail) provided such Proof of Claim is actually received before the filing of a motion for an order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received by the Claims Administrator at the address designated in the Notice.

b. To be valid, a Proof of Claim must: (i) be completed in a manner that permits the Claims Administrator to determine the eligibility of the claim as set forth in the Proof of Claim; (ii) include the release by the Claimant of all Released Parties as set forth in the Stipulation; and (iii) be signed with an affirmation that the information is true and correct.

c. For all determinations concerning their Proof of Claim, each Class Member shall submit to the jurisdiction of the Court.

20. All Class Members who do not submit valid and timely Proofs of Claim will be forever barred from receiving any payments from the Net Settlement Fund, but will in all other respects be subject to and bound by the provisions of the Stipulation and the Order and Final Judgment, if entered, whether favorable or unfavorable and whether or not they submit a Proof of Claim, unless such Persons request exclusion from the Class in a timely and proper manner, as provided herein.

21. All Class Members shall be bound by all determinations and judgments in the litigation, whether favorable or unfavorable, unless such Persons request exclusion from the Class in a timely and proper manner, as hereinafter provided. Any Person falling within the definition of the Class, may, upon request, be excluded from the Class. A Class Member wishing to make such request must submit a request for exclusion ("Request for Exclusion") and shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than twenty-one (21) calendar days prior to the Final Settlement Hearing, to the Claims Administrator at the address listed in the Notice. Such request for exclusion must state: (i) the name, address, phone number and e-mail contact information (if any) of the Person seeking exclusion, (ii) the Person's purchases and/or acquisitions of TMI common stock and/or preferred stock during the Class Period and any sales thereof, including the dates, the number of shares and price(s) paid and received for each such purchase, acquisition and sale, and (iii) that the Person specifically requests to be excluded from the Class, and must be signed by such Person. Co-Lead Counsel may contact any Person or entity filing a request for exclusion, or their attorney if one is designated, to discuss the exclusion. Any Person who submits a Request

for Exclusion may withdraw such request by filing a written notice with the Court by no later than 5:00 P.M. Mountain Time on the day prior to the Settlement Hearing. Such notice to withdraw a previously-submitted request for exclusion will be allowed or disallowed following review by the Court.

22. Class Members who submit valid and timely Requests for Exclusion in the manner set forth in paragraph 21 herein and in the Notice shall have no rights under the Settlement and shall not be entitled to receive any payment from the Net Settlement Fund.

23. Any Class Member who wishes to object to the Settlement, the Plan of Allocation, or the application for Attorneys' Fees and Expenses, must serve such objections and any supporting papers, so that they are received at least twenty-one (21) days prior to the Final Settlement Hearing, upon each of the following:

CO-LEAD COUNSEL

Andrew Zivitz, Esq.
Benjamin J. Sweet, Esq.
Kessler Topaz Meltzer & Check LLP
280 King of Prussia Road
Radnor, PA 19087

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REPRESENTATIVE SETTLING DEFENDANTS' COUNSEL

Jonathan A. Shapiro, Esq.
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Los Angeles, CA 90071

and file the same with the Clerk of the Court, U.S. District Court, District of New Mexico, 333 Lomas N.W. Ste 270, Albuquerque, New Mexico 87102. Any member of the Class who timely objects to the Settlement, Plan of Allocation and/or the application for Attorneys' Fees and Expenses, or who otherwise wishes to be heard, may appear in person or by his, her or its attorney, at his, her or its expense at the Final Settlement Hearing and present evidence or argument that may be proper or relevant; *provided however*, that no Person other than the Settling Parties and their counsel shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Person shall be considered by the Court unless at least twenty-one (21) calendar days prior to the Final Settlement Hearing, such Person files with the Court and serves upon the counsel listed above: (i) a statement of such Person's objections to any matters before the Court concerning the Settlement; (ii) the grounds therefor or the reasons that such Person desires to appear and be heard, as well as all documents or writings such Person desires the Court to consider; (iii) whether that Person intends to present any witnesses; and (iv) proof of the Person's membership in the Class, which proof shall include the Person's purchases and/or acquisitions of TMI common stock and/or preferred stock during the Class Period and any sales thereof, including the dates, number of shares and price(s) paid and received for each such

purchase, acquisition and sale. Class Members do not need to appear at the Final Settlement Hearing or take any other action to indicate their approval.

24. Any Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Order and Final Judgment to be entered approving the Settlement, the Plan of Allocation, or the application for an award of Attorneys' Fees and Expenses.

25. The Court reserves the right to adjourn the Final Settlement Hearing or any adjournment thereof without any further notice other than entry of an order on the Court's docket, and to approve the Settlement without further notice to the Class.

26. All papers in support of the Settlement, the Plan of Allocation and any application for Attorneys' Fees or Expenses shall be filed and served no later than thirty-five (35) days before the Final Settlement Hearing.

27. Any submissions filed in response to any objections or in further support of the Settlement, the Plan of Allocation and any application for Attorneys' Fees or Expenses shall be filed no later than seven (7) days prior to the Final Settlement Hearing.

28. Pending final determination of whether the Settlement should be approved, all Class Members, and each of them, and anyone acting or purporting to act for any of them, shall be enjoined from prosecuting, attempting to prosecute, or assisting others in the prosecution of, any Settled Claims (as defined in the Stipulation) against the Released Parties. In addition, all proceedings in the Litigation (other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement) are stayed as to the Settling Defendants.

29. In the event the Settlement is not consummated pursuant to its terms, the Stipulation, except as otherwise provided therein, including any amendment(s) thereto, and this Order, shall be null and void, of no further force or effect, except as set forth in the Stipulation, and shall be without prejudice to any Settling Party, and may not be introduced as evidence or referred to in any action or proceedings by any person or entity, and each party shall be restored to his, her or its respective position as it existed before the execution of the Stipulation, pursuant to the terms of the Stipulation.

30. The Settlement Fund shall be deemed to be in the custody of the Court to be held exclusively for the purpose of effecting the Settlement until such time as the assets of the Settlement Fund are disbursed pursuant to the Stipulation and/or further order of the Court. The Settlement Fund Administrator shall not disburse the Gross Settlement Fund, or any portion thereof, except as provided in this Stipulation, or upon Order of the Court.

31. The Stipulation and all negotiations, statements, and proceedings in connection therewith, or the fact of the Settlement, shall not, in any event, be construed or deemed to be evidence of an admission or concession on the part of Plaintiffs, any Settling Defendant, any member of the Class, or any other Person, of any liability or wrongdoing whatsoever by them, or any of them, and shall not be offered or received in evidence in any action or proceeding (except an action to enforce the Stipulation and Settlement contemplated thereby), or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that the Plaintiffs, any member of the Class, or any other Person, has or has not suffered any damage. The Stipulation is not a finding of the validity or invalidity of any claims in the Litigation or of any wrongdoing by any of the Settling Defendants named therein.

32. The passage of title and ownership of the Settlement Fund to the Settlement Fund Administrator in accordance with the terms of the Stipulation is approved. No Person that is not a Class Member shall have any right to any portion of, or in the distribution of, the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

33. The Court retains exclusive jurisdiction over the action to consider all further matters arising out of, or relating to, the Settlement, including by way of illustration and not limitation, any dispute concerning any Proof of Claim filed by any Class Member and any future requests by one or more of the Settling Parties that the Order and Final Judgment, the releases and/or the permanent injunction set forth in the Stipulation be enforced.

34. The Court may, for good cause, extend any of the deadlines set forth in this Order without notice to Class Members.

Dated: April 23, 2012

James O. Browning
HON. JAMES O. BROWNING
UNITED STATES DISTRICT JUDGE

I preliminarily approve of the settlement with the exception of two items:

1. I do not believe the cy pres relief is a sound judicial doctrine. I have touched on this issue in Pobles v. Brake Masters Systems, Inc., 2011 U.S. Dist. LEXIS 14432, at **46-47 (January 31, 2011 D.N.M.) (Browning, J.). I will issue an opinion later to state more fully my views. I am not commenting on the Center of Civic Values in any way; I simply think the money should be distributed or returned to the Defs. I do not think the class action should be a free-standing device to do justice, but to compensate class members and to resolve disputes. See, e.g., Myriam Niles: Gary B. Friedman, Exploding the Class Action Agency Costs Myth: the Social Utility of Entrepreneurial Lawyers, 152 U.Pa. L. Rev. 103 (2006); Martin H. Redish, Peter Julian: Samantha Zyortz, Cy Pres


Relief and the Pathologies of the Modern Class Action: A Normative and Empirical Analysis, 62 Fla. L. Rev. 617, 7(210); Sam Yorge, Cy Pres Distributions in Class

Actions Settlements, 2009 Colum. Bus. L. Rev. 1014 (2009).

The parties should delete that phrase on p. 27 of the Settlement Agmt. as from the notice.

- (2) Delete in the notice ^(p. 15) and, if in the Agmt, the sentence: "No distribution will be made on a claim where the potential distribution amount is less than ten dollars (\$10.00) in cash." If someone takes the time and resources to fill out the claim form, the member should be paid.

THORNBURG:18836.prop.order


4/21/12