

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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

Case No. CIV 07-815JB/WDS

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**[PROPOSED] ORDER AND FINAL JUDGMENT**

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_, 2012, a hearing having been held before this Court to determine, *inter alia*: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated March 28, 2012 (the "Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by 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, Nicholas F. Aldrich, Sr.; Betty L. Manning; John Learch; and Boilermakers Lodge 154 Retirement Plan (collectively, the "Plaintiffs"), on behalf of the Class, against (i) defendants Garrett Thornburg, Larry A. Goldstone, and Clarence G. Simmons (the "Individual Defendants") and (ii) defendants 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"), (2) whether judgment should be entered dismissing the Consolidated Amended Class Action Complaint (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 who have not requested exclusion therefrom;

and (3) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among Class Members;

WHEREAS, the Notice substantially in the form approved by the Court in the Court's Order Preliminarily Approving Settlement and Providing For Notice ("Preliminary Approval Order") was mailed to all reasonably identifiable Class Members and the Summary Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with that Order and the specifications of the Court; and

WHEREAS, the Court having considered all matters submitted to it at the hearing and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. All capitalized terms used herein have the same meanings as set forth and defined in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Litigation, Plaintiffs, all Class Members, and the Settling Defendants.

3. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Plaintiffs are typical of the claims of the Class they seek to represent; (d) Plaintiffs and their counsel have and will fairly and adequately represent and protect the interests of the Class; (e) 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 (f) a class action is superior to other available methods for the fair and

efficient adjudication of this Litigation. The Class is being certified for settlement purposes only.

4. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies this action as a class action for settlement purposes only, and certifies as the Class all persons and entities who purchased or otherwise acquired Thornburg Mortgage, Inc. ("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 excluded themselves by filing timely and valid requests for exclusion in accordance with the Preliminary Approval Order, a list of whom is attached to this Order as Exhibit A.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby certifies Plaintiffs as the class representatives for the Class and appoints the counsel previously selected by Lead Plaintiffs as Co-Lead Counsel for the Class.

6. The Court hereby finds that the forms and methods of notifying the Class of the Settlement and its terms and conditions met 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; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all

persons and entities entitled thereto of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation. No Class Member is 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. A full opportunity has been offered to the Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is hereby determined that all members of the Class are bound by this Order and Final Judgment except those persons listed on Exhibit A.

7. The Settlement, and all transactions preparatory or incident thereto, is found to be fair, reasonable and adequate, and in the best interests of the Class, and it is hereby approved. Plaintiffs and the Settling Defendants are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

8. The Litigation, the Complaint and all claims included therein, as well as all of the Settled Claims (defined in the Stipulation and in paragraph 9(b) below), are hereby dismissed with prejudice as to the Plaintiffs and the other members of the Class, and as against each and all of the Released Parties (defined in the Stipulation and in paragraph 9(a) below). The Settling Parties are to bear their own costs except as otherwise provided in the Stipulation.

9. As used in this Order and Final Judgment, the terms "Released Parties," "Settled Claims," "Settled Defendants' Claims" and "Unknown Claims" shall have the meanings as provided in the Stipulation and as specified below:

a. "Released Parties" means TMI, the Individual Defendants, the Dismissed Defendants, and any of their current or former, subsidiaries, affiliates, partners, joint ventures, officers, directors, principals, shareholders, members, agents (acting in their capacity as agents),

employees, attorneys, insurers, including the Insurer, reinsurers, advisors, accountants, associates and/or any other individual or entity in which any of TMI, the Individual Defendants, or the Dismissed Defendants has a controlling interest or which is related to or affiliated with any of TMI, the Individual Defendants, or the Dismissed Defendants and the current or former legal representatives, heirs, successors in interest or assigns of any of TMI, the Individual Defendants, or the Dismissed Defendants; provided, however, that "Released Parties" does not include any of the Non-Settling Defendants, nor any of their respective parents, successors, subsidiaries, and affiliates and any entity in which any of them have or had a controlling interest and the officers and directors thereof.

b. "Settled Claims" means any and all claims, debts, demands, liabilities, rights and causes of action of every nature and description whatsoever (including but not limited to any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in the Litigation by the Plaintiffs and/or Class Members or any of them against any of the Released Parties; or (ii) that could have been alleged, asserted or contended in any forum by Plaintiffs and/or Class Members or any of them, or the successors and assigns of any of them against the Released Parties which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint (or any preceding complaints) and which relate to the purchase or acquisition of TMI common stock and/or preferred stock in the open market and/or in or traceable to the

Offerings during the Class Period; provided, however, that Settled Claims do not include (i) any claims to enforce any of the terms of this Settlement, and any claims that could be asserted in response to such a claim to enforce or (ii) any claims against the Non-Settling Defendants.

c. "Settled Defendants' Claims" means any and all claims, debts, demands, liabilities, rights and causes of action of every nature and description whatsoever (including but not limited to any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known and Unknown Claims (as defined herein), (i) that have been asserted in the Litigation by the Released Parties or any of them against the Plaintiffs, any Class Member or any of their attorneys or (ii) that could have been alleged, asserted or contended in any forum by the Released Parties, or the successors and assigns of any of them against the Plaintiffs, any Class Member or any of their attorneys which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint (or any preceding complaints) and which relate to the purchase or acquisition of TMI common stock and/or preferred stock in the open market and/or in or traceable to the Offerings during the Class Period; provided, however, that Settled Defendants' Claims do not include (i) any claims to enforce any of the terms of this Settlement, and any claims that could be asserted in response to such a claim to enforce or (ii) any claims against the Non-Settling Defendants.

d. "Unknown Claims" means any and all Settled Claims which Plaintiffs and/or any member of the Class does not know or suspect to exist in his, her or its favor as of the

Effective Date, which if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement, and any Settled Defendants' Claims which any Released Party does not know or suspect to exist in his, her or its favor as of the Effective Date, which if known by him; her or it might have affected his or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants' Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Plaintiffs, the Individual Defendants, and Dismissed Defendants shall expressly waive, and each Class Member and Released Party shall be deemed to have waived and by operation of the Order and Final Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Settling Parties acknowledge, and Class Members and Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendants' Class was separately bargained for and was a key element of the Settlement.

10. Upon the Effective Date of the Settlement, the Plaintiffs and all Class Members, on behalf of themselves, their current and former heirs, executors, administrators, successors, and assigns, shall be deemed to have released and to have forever relinquished and discharged each and every one of the Settled Claims as against the Released Parties, whether or not such Class Members execute and deliver a Proof of Claim.

11. Upon the Effective Date of the Settlement, each of the Released Parties, on behalf of themselves, their current and former heirs, executors, administrators, successors, and assigns, shall be deemed to have released and to have forever relinquished and discharged each and every one of the Settled Defendants' Claims as against the Plaintiffs, any of the Class Members, or their attorneys.

12. Upon the Effective Date of the Settlement, the Settling Parties and anyone acting or purporting to act for any of them, shall be permanently and forever enjoined from prosecuting, attempting to prosecute, or assisting others in the prosecution of, any Settled Claims and Settled Defendants' Claims.

13. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Class Members, and the Court hereby approves the Plan of Allocation.

14. The Court hereby bars all claims by any Person against the Settling Defendants and the Released Parties, or by any of them against any Persons, for contribution, indemnification, or under any other theory, based upon, or related to any fact or circumstances involved in or arising out of the Litigation, with the scope and preclusive effect of this bar order as broad as that permissible under 15 U.S.C. § 78u-4(f)(7) and the common law.

15. The Court finds that all parties and their counsel have complied with each requirement of the Private Securities Litigation Reform Act of 1995 and Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

16. The Stipulation and all negotiations, statements, and proceedings in connection therewith, and the fact of the Settlement, shall not, in any event, be construed or deemed to be evidence of an admission or concession by 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.

17. No Class Member or Claimant shall have any claim against Plaintiffs, Co-Lead Counsel, the Claims Administrator, or any other agent designated by Co-Lead Counsel based on, or in any way relating to, the distributions from the Net Settlement Fund that have been made substantially in accordance with the Stipulation and any applicable orders of the Court. No Class Member or Claimant shall have any claim against the Individual Defendants, the Dismissed Defendants, the Settling Defendants' Counsel, the Insurer, or any of the Released Parties based on, or in any way relating to, the administration of or distributions from the Net Settlement Fund, the determination, administration, calculation or payment of claims, the administration of the Custodial Account, or any losses incurred in connection therewith, the Plan of Allocation, or the giving of notice to Class Members.

18. Exclusive jurisdiction is hereby retained over the Settling Parties and the Class Members for all matters relating to the Litigation, including (i) the administration, interpretation, effectuation or enforcement of the Stipulation, the Plan of Allocation and this Order and Final Judgment, (ii) hearing and determining any application for fees and expenses by Co-Lead

Counsel, and (iii) supervising the administration and distribution of the settlement proceeds to the Class Members.

19. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

20. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

21. The finality of this Order and Final Judgment shall not be affected, in any manner, by rulings that the Court may make on Co-Lead Counsel's application for an award of Attorneys' Fees and Expenses.

22. In the event that the Settlement does not become final and effective in accordance with the terms and conditions set forth in the Stipulation, then this Order and Final Judgment shall be rendered null and void and be vacated and the Settlement and all orders entered in connection therewith shall be rendered null and void (except as provided in paragraphs K.2, 3, and 4 in the Stipulation), and the Settling Parties shall be deemed to have reverted to their respective status prior to the execution of this Stipulation, and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, preserving in that event all of their respective claims and defenses in the Litigation.

Dated: \_\_\_\_\_, 2012

---

HON. JAMES O. BROWNING  
UNITED STATES DISTRICT JUDGE