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IMPAC FUNDING CORPORATION

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

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11 RENE MARENTES and MARTHA  
MARENTES, Husband and Wife, on Behalf of  
12 Themselves, and All Others Similarly Situated,

13 Plaintiffs,

14 vs.

15 IMPAC MORTGAGE HOLDINGS, INC.;  
IMPAC FUNDING CORPORATION; and  
16 DOES 1 through 100 inclusive,

17 Defendant.

Case No. 30-2012-00565615-CU-BT-CXC

ASSIGNED FOR ALL PURPOSES TO:  
THE HONORABLE KIM G. DUNNING  
DEPARTMENT CX104

**DEFENDANT IMPAC FUNDING  
CORPORATION'S ANSWER TO FIRST  
AMENDED COMPLAINT**

Date Action Filed: July 25, 2012  
Trial Date: None Set

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19 Defendant IMPAC FUNDING CORPORATION ("Defendant") hereby answers the  
20 unverified First Amended Complaint ("FAC") of Plaintiffs RENE MARENTES and MARTHA  
21 MARENTES ("Plaintiffs") asserting claims on behalf of themselves and an alleged putative class  
22 of plaintiffs similarly situated, as follows:

23 **GENERAL DENIAL**

24 Pursuant to California Code of Civil Procedure section 431.30, Defendant denies generally  
25 and specifically each and every allegation (and the sole purported cause of action) in the FAC.  
26 Defendant further denies that Plaintiffs have been injured or damaged in any amount or at all, or are  
27 otherwise entitled to any of the relief requested.

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1 **AFFIRMATIVE DEFENSES**

2 As separate and distinct answers and affirmative defenses, Defendant alleges the following  
3 as applicable to Plaintiffs and the putative class:

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to State a Claim)**

6 1. The FAC fails to state facts sufficient to constitute a cause of action upon which relief  
7 may be had.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Statute of Limitations)**

10 2. The FAC is barred by statutes of limitations as to Plaintiffs and/or putative class  
11 members, including, without limitation, California Business and Professions Code section 17208  
12 and California Code of Civil Procedure sections 337, 338, 339, 340, and 343.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **(Lack of Standing)**

15 3. The FAC is barred because Plaintiffs and/or putative class members lack standing to  
16 pursue the allegations made in the FAC.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 **(Lack of Injury In Fact)**

19 4. Plaintiffs' claims are barred and they lack standing under California Business and  
20 Professions Code section 17200 *et seq.* because Plaintiffs and/or putative class members have not  
21 "suffered injury in fact and lost money or property" as a result of acts and/or omission by Defendant.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 **(No Causation or Reliance)**

24 5. The FAC is barred to the extent that Plaintiffs and/or putative class members cannot  
25 attribute any damages resulting from Defendant's alleged practices.

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**SIXTH AFFIRMATIVE DEFENSE**

**(Plaintiffs Not Damaged)**

6. Plaintiffs and/or members of the putative class were not damaged and have not suffered an actual loss as a result of any act or omission by Defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Unjust Enrichment)**

7. Plaintiffs and/or putative class members would be unjustly enriched if allowed to recover on their FAC. Plaintiffs and/or putative class members received value equal to amounts they paid.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Quantum Meruit)**

8. Without admitting in any way that Plaintiffs are entitled to any relief or that any violation of law occurred, Plaintiffs' claims are barred because Defendant is entitled to retain the *quantum meruit* value provided to Plaintiffs and/or putative class members in order to prevent unjust enrichment.

**NINTH AFFIRMATIVE DEFENSE**

**(Bankruptcy)**

9. Plaintiffs and/or putative class members lack standing to pursue their claims to the extent they have filed for bankruptcy protection or file for bankruptcy protection during the pendency of this action. Plaintiffs and/or putative class members claims are barred by judicial estoppel to the extent they have obtained a bankruptcy discharge or otherwise obtained the benefits of bankruptcy protection, in whole or in part, without disclosing the claims.

**TENTH AFFIRMATIVE DEFENSE**

**(Contributory or Comparative Fault)**

10. Without admitting that Plaintiffs were in any way damaged by any behavior of Defendant, if Plaintiffs and/or putative class members were damaged, the damage was caused in whole or in part by their own contributory or comparative fault.

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**ELEVENTH AFFIRMATIVE DEFENSE**

**(Causation by Plaintiffs' Own Acts)**

11. Without admitting that Plaintiffs were in any way damaged by any behavior of Defendant, if Plaintiffs and/or putative class members were damaged, the damage was caused in whole or in part by their own acts.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Conduct of Third Parties)**

12. Defendant is not liable to Plaintiffs and/or putative class members for the intervening and superseding acts and omissions of Plaintiffs or of any other parties, persons or entities for whose acts or omissions Defendant is not responsible, and which proximately caused the losses alleged in the FAC.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Exercise Due Care/Mitigate Damages)**

13. The FAC is barred because Plaintiffs and/or putative class members did not exercise ordinary care, caution, or prudence to avoid the damages alleged, and the resultant damages sustained, if any, were proximately caused and contributed to by the negligence or intentional conduct of Plaintiffs and/or putative class members.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Voluntary Purchase/Ratification)**

14. The FAC is barred because Plaintiffs and/or putative class members voluntarily purchased or continued to purchase Defendant's services with knowledge of and consent to the fee charged by Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

15. The FAC is barred in that Plaintiffs and/or putative class members have failed to come to court with clean hands and act in good faith with respect to Defendant.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

16. The FAC is barred because Plaintiffs and/or putative class members are estopped to assert the claims in the FAC.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Waiver)**

17. The FAC is barred because Plaintiffs and/or putative class members knowingly, voluntarily, and willingly waived any rights they may otherwise have had against Defendant.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Laches)**

18. The claims asserted by Plaintiffs are barred, in whole or in part, by the doctrine of laches because Plaintiffs and/or putative class members inexcusably and unreasonably delayed in seeking rescission and restitution, and accepted the benefits of mortgage modification.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Offset or Credit)**

19. In the event there is a monetary award to Plaintiffs and/or putative class members, any such award must be offset by any amounts Plaintiffs and/or putative class members owe Defendant and/or the credits to which Defendant is entitled to receive from Plaintiffs and/or putative class members, including but not limited to delinquent mortgage payments, received value for fees paid, and fees previously waived.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Implied Contract)**

20. Plaintiffs' claims are barred because, even if the express terms of the parties' agreement are unenforceable in whole or in part due to the alleged statutory violation or otherwise, an implied contract exists obliging Plaintiffs and/or putative class members to pay and Defendant to retain the charges Plaintiffs and/or putative class members agreed to pay in order to prevent unjust enrichment.

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**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Reformation)**

21. The mutual intent of the parties was that Plaintiffs and/or putative class members pay the agreed upon charge. Both because a mistake of law or fact existed, and for broader equitable considerations, the parties’ agreement should be reformed as necessary to effectuate the parties’ mutual intent and prevent unjust enrichment.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Conduct Not Unlawful)**

22. The FAC is barred because Defendant’s conduct was not unlawful.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Privilege / Justification)**

23. The acts and omissions alleged against Defendant in the FAC were undertaken in good faith with the absence of intent, malicious or otherwise, to injure Plaintiffs and/or putative class members, and constitute lawful, proper and justified means to further the contractual interests and business purposes of Defendant, and therefore such alleged conduct against Defendant is subject to privilege and justified.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Adequate Remedy at Law)**

24. The FAC is barred because Plaintiffs and/or putative class members have adequate remedies at law for any injuries suffered.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(Improper Injunctive Relief)**

25. Plaintiffs’ claims for injunctive relief are barred because the requested relief is impermissibly vague and overbroad, and because there is no threatened or imminent harm to Plaintiffs and/or putative class members.

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**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

**(Voluntary Payment)**

26. Plaintiffs' claims for monetary relief are barred because Plaintiffs and/or putative class members voluntarily paid the money at issue in the FAC.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Res Judicata/Collateral Estoppel)**

27. The FAC is barred by the doctrines of res judicata and/or collateral estoppel.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Arbitration)**

28. The claims of some persons whom Plaintiffs seek to represent are subject to binding and enforceable arbitration agreements.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

**(Good Faith/Lack of Intent)**

29. The FAC and each and every purported cause of action alleged therein are barred in that at all times mentioned, Defendant's actions and conduct were undertaken in a good faith belief that such actions and conduct were lawful.

**THIRTIETH AFFIRMATIVE DEFENSE**

**(Business Judgment)**

30. The FAC is barred because Defendant's actions were reasonable exercises of business judgment, not forbidden by law.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

**(Conduct Neither Unfair Nor Fraudulent)**

31. The FAC is barred because Defendant's conduct was neither unfair nor fraudulent.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

**(Safe Harbor)**

32. Any claim based on California Business and Professions Code section 17200 *et seq.* is barred because Section 17200 cannot be used to state a cause of action that is absolutely barred under some other principle of law or existing regulation.

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**THIRTY-THIRD AFFIRMATIVE DEFENSE**

**(Invalid Class Action – Lack of Ascertainability)**

33. The class allegations are improper because there is no ascertainable, numerous class of persons damaged by the acts and omissions alleged in the FAC.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

**(Invalid Class Action – Lack of Commonality)**

34. The class allegations are improper because there are diverse factual and legal questions unique to each individual member of the purported class. This case cannot be tried upon common proof inasmuch as the issues requiring separate adjudication are so numerous and substantial that the maintenance of a class action would not be advantageous to the judicial process and/or the litigants.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

**(Invalid Class Action – Lack of Typicality)**

35. The class allegations are improper because the Plaintiffs’ claims or defenses are not typical of the claims or defenses of the putative class members.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

**(Improper Class Action – Adequacy of Representation)**

36. Plaintiffs and/or their counsel are not adequate to represent the class inasmuch as they are not able to adequately and fairly protect the interests of all members of the diverse putative class.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Improper Class Action – Unmanageable/Not Superior to Alternatives)**

37. The class allegations are improper because this action is unmanageable as a class action and the putative class members are unlikely to receive any appreciable benefit. A class action is not superior means to other means of adjudicating the claims asserted.

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**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Improper Class Action – Lack of Predominance)**

38. The class allegations are improper in that common questions of law and/or fact do not predominate over individual issues.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

**(Due Process)**

39. The class allegations in connection with the remedies sought in the FAC are not amenable to class adjudication without depriving Defendant of its procedural and substantive due process rights (1) to adjudicate individual defenses and (2) to otherwise challenge the award of restitution to those who cannot return benefits received. Further, Plaintiffs’ claims are predicated upon statutes which are unconstitutionally vague and fail to give Defendant fair notice of prohibited conduct either on their face or as applied.

**FORTIETH AFFIRMATIVE DEFENSE**

**(Speculative Damages)**

40. The FAC and each and every purported cause of action alleged therein are barred because speculative injuries/damages cannot be remedied/recovered. Here, allegations that Plaintiffs and/or putative class members suffered damages depend on speculative allegations concerning what would have happened if they had never paid a fee for mortgage modification-related services, or paid the fee at a different time. The damages sought are speculative, uncertain and incapable of calculation.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

**(No Restitution)**

41. Plaintiffs and/or putative class members are not entitled to restitution from Defendant to the extent that Defendant is not (and never was) in possession of money paid to credit card companies or other lenders as interest in order to borrow money to pay Defendant.

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**FORTY-SECOND AFFIRMATIVE DEFENSE**

**(Unconstitutional Taking)**

42. Any award of restitution pursuant to California Business and Professions Code section 17203 would constitute a taking of property without just compensation in violation of the Takings Clause of the United States Constitution and of Article I, Section 19 of the California Constitution.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

**(Apportionment)**

43. Defendant is entitled to indemnification by apportionment against all other parties and persons whose negligence or other conduct proximately caused or contributed to and/or putative class members' injuries, if any.

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

**(Contribution)**

44. Defendant is entitled to contribution from all other parties and persons whose negligence or other conduct proximately caused or contributed to Plaintiffs' and/or putative class members' injuries, if any.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

**(No Attorneys' Fees)**

45. Plaintiffs and/or their counsel may not recover attorneys' fees from Defendant under California Code of Civil Procedure section 1021.5 for reasons including the lack of pre-litigation notice and lack of any public benefit.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

**(Additional Defenses)**

46. Defendant hereby gives notice that it intends to rely upon any other defenses that may become available or appear during discovery and other proceedings in this case and hereby reserves its right to amend this Answer to assert any such defenses.

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**PRAYER**

Wherefore, Defendant prays that the Court enter judgment as follows:

1. That Plaintiffs' FAC be dismissed in its entirety, with prejudice;
2. That Defendant be awarded is costs of suit;
3. That Defendant be awarded such other further relief as the Court deems appropriate and just.

Dated: August 14, 2015

RUTAN & TUCKER, LLP  
LAYNE H. MELZER  
LUCAS K. HORI

By: /s/ Layne H. Melzer  
Layne H. Melzer  
Attorneys for Defendant  
IMPAC FUNDING CORPORATION

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**PROOF OF SERVICE**

*(Rene Marentes, et al. v. Impac Mortgage Holdings, Inc., et al.  
OCSC, Civil Complex Center Case No. 30-2012-00565615-CU-BT-CXC)*

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931. My electronic notification address is hdall@rutan.com.

On August 14, 2015, I served on the interested parties in said action the within:

**DEFENDANT IMPAC FUNDING CORPORATION'S ANSWER TO FIRST AMENDED COMPLAINT**

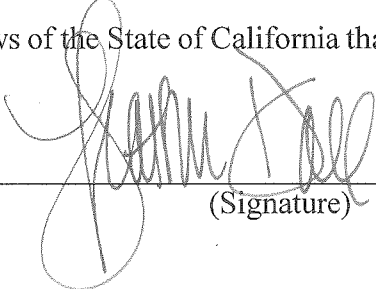
as stated below:

(BY E-MAIL) by transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth on the attached mailing list.

Executed on August 14, 2015, at Costa Mesa, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Heather Dall  
\_\_\_\_\_  
(Type or print name)

  
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(Signature)

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