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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF PLACER**

14 MONICA CUTHBERT, SHERRI MAYER,
15 BELA CRISPIN, CORRINE SALAZAR-
16 ROSE, individuals, on behalf of themselves
and on behalf of all persons similarly situated,

17 Plaintiff,

18 vs.

19 AMERICAN PACIFIC MORTGAGE
20 CORPORATION, a California Corporation;
21 and DOES 1 through 50, inclusive,

22 Defendants.

CASE NO.: S-CV-0049369

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: July 23, 2024

Hearing Time: 8:30 a.m.

Judge: Hon. Trisha Hirashima

Dept: 42

Date Filed: October 27, 2022

Trial Date: Not set

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24 This matter came before the Honorable Trisha Hirashima of the Superior Court of the State
25 of California, in and for the County of Placer, on July 23, 2024, for hearing on the unopposed
26 motion by Plaintiffs Monica Cuthbert, Bela Crispin, Sherri Mayer, and Corrine Salazar-Rose
27 (“Plaintiffs”) for preliminary approval of the Settlement with Defendant American Pacific Mortgage
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PRELIMINARY APPROVAL ORDER

1 Corporation (“Defendant”). The Court, having considered the briefs, argument of counsel and all
2 matters presented to the Court and good cause appearing, hereby GRANTS Plaintiffs’ Motion for
3 Preliminary Approval of Class Action Settlement.

4 **IT IS HEREBY ORDERED:**

5 1. The Court preliminarily approves the Class Action and PAGA Settlement Agreement
6 (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
7 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is based on the
8 Court’s determination that the Settlement set forth in the Agreement is within the range of possible
9 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
10 and California Rules of Court, rule 3.769.

11 2. This Order incorporates by reference the definitions in the Agreement, and all terms
12 defined therein shall have the same meaning in this Order as set forth in the Agreement.

13 3. The Gross Settlement Amount that Defendant shall pay is Six Hundred Thousand
14 Dollars (\$600,000.00). It appears that investigation and research have been conducted such that
15 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
16 to the Court that the Settlement will avoid substantial additional costs by all Parties, as well as avoid
17 the delay and risks that would be presented by the further prosecution of the Action. It further
18 appears that the Settlement has been reached as the result of serious and non-collusive, arms-length
19 negotiations.

20 4. The Court preliminarily finds that the Settlement appears to be within the range of
21 reasonableness of a settlement that could ultimately be given final approval by this Court. The
22 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
23 preliminarily finds that the monetary settlement awards made available to the Class is fair, adequate,
24 and reasonable when balanced against the probable outcome of further litigation and the significant
25 risks relating to certification, liability, and damages issues.

26 5. The Agreement provides for an attorneys’ fees award not to exceed one-third of the
27 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$25,000, and
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1 proposed Class Representative Service Payments to Plaintiffs in an amount not to exceed \$12,500
2 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount of any
3 service award, until the Final Approval Hearing. Plaintiffs will be required to present evidence
4 supporting these requests, including lodestar, prior to final approval.

5 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
6 representative treatment and certification of a class for settlement purposes only. This stipulation
7 will not be deemed admissible in this or any other proceeding should this Settlement not become
8 final. For settlement purposes only, the Court conditionally certifies the Class which consists of “all
9 individuals who were employed by Defendant in California and classified as a non-exempt
10 employee at any time during the Class Period who did not sign an arbitration agreement, and
11 excluding non-exempt employees who were employed by Defendant as loan officer assistants or
12 processors, or who performed equivalent duties to loan officer assistants and processors, up to
13 February 18, 2020.” The “Class Period” is October 27, 2018 through December 1, 2023.

14 7. The Court concludes that, for settlement purposes only, the Class meets the
15 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)
16 the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;
17 (b) common questions of law and fact predominate, and there is a well-defined community of
18 interest amongst the members of the Class with respect to the subject matter of the litigation; (c) the
19 claims of Plaintiffs are typical of the claims of the members of the Class; (d) Plaintiffs will fairly
20 and adequately protect the interests of the members of the Class; (e) a class action is superior to
21 other available methods for the efficient adjudication of this controversy; and (f) counsel for the
22 Class is qualified to act as counsel for the Class and Plaintiffs are adequate representatives of the
23 Class.

24 8. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
25 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
26 Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal
27 Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

1 9. The Agreement provides for \$50,000 PAGA Penalties out of the Gross Settlement
2 Amount, of which \$37,500 shall be allocated to the Labor & Workforce Development Agency
3 (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this Agreement
4 pursuant to the PAGA and \$12,500 shall be allocated as the Individual PAGA Payments to the
5 Aggrieved Employees Group I and Aggrieved Employees Group II. “Aggrieved Employees Group
6 1” means all individuals who were employed by Defendant in California and classified as a non-
7 exempt employee at any time during the PAGA Period who did not sign an arbitration agreement.
8 “Aggrieved Employees Group 2” means all individuals who were employed by Defendant in
9 California and classified as a non-exempt employee at any time during the PAGA Period who
10 signed an arbitration agreement. The PAGA Period is December 9, 2021 through December 1,
11 2023. Pursuant to Labor Code section 2699, subdivision (1)(2), the LWDA will be provided notice
12 of the Agreement and these settlement terms. The Court preliminarily finds the PAGA Penalties to
13 be reasonable.

14 10. The Court hereby approves, as to form and content, the Class Notice attached to the
15 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
16 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right to
17 be excluded from the Class by submitting a written opt-out request, and of each member’s right and
18 opportunity to object to the Settlement. The Court further finds that the distribution of the Class
19 Notice substantially in the manner and form set forth in the Agreement and this Order meets the
20 requirements of due process, is the best notice practicable under the circumstances, and shall
21 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
22 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
23 Notice Packet is returned because of an incorrect address, the Administrator will promptly search for
24 a more current address for the Class Member and re-mail the Class Notice Packet to any new
25 address for the Class Member no later than seven (7) days after the receipt of the undelivered Class
26 Notice.

1 11. The Court hereby appoints Apex Class Action Administration as the Administrator.
2 No later than 21 days after this Order, Defendant will provide the Class Data to the Administrator.
3 The Defendant shall also provide the Class Data with respect to all Aggrieved Employees. The
4 Administrator will perform address updates and verifications as necessary prior to the first mailing.
5 Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) days after
6 receiving the Class Data, the Administrator will mail the Class Notice Packet to all Class Members
7 via first-class regular U.S. Mail to their last known address.

8 12. The Court hereby preliminarily approves the proposed procedure for exclusion from
9 the Settlement. Any Class Member may individually choose to opt out of and be excluded from the
10 Class as provided in the Class Notice by following the instructions for requesting exclusion from the
11 Class that are set forth in the Class Notice. All requests for exclusion must be postmarked or
12 received no later than sixty (60) calendar days after the date of the mailing of the Class Notice
13 (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline for requests
14 for exclusion will be extended an additional fourteen (14) days. A Request for Exclusion may also
15 be faxed or emailed to the Administrator as indicated in the Class Notice. Any such person who
16 chooses to opt out of and be excluded from the Class will not be entitled to any recovery under the
17 Class Settlement and will not be bound by the Class Settlement or have any right to object, appeal,
18 or comment thereon. Class Members who have not requested exclusion shall be bound by all
19 determinations of the Court, the Agreement, and the Judgment. A request for exclusion may only
20 opt out that particular individual, and any attempt to affect an opt out of a group, class, or subclass
21 of individuals is not permitted and will be deemed invalid.

22 13. Any Class Member who has not opted out may appear at the final approval hearing
23 and may object or express the Member’s views regarding the Settlement and may present evidence
24 and file briefs or other papers that may be proper and relevant to the issues to be heard and
25 determined by the Court as provided in the Class Notice. Class Members will have until the
26 Response Deadline to submit their written objections to the Administrator. Written objections may
27 also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class Notice
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1 Packet is re-mailed, the Response Deadline for written objections will be extended an additional
2 fourteen (14) days. Alternatively, Class Members may appear at the Final Approval Hearing to
3 make an oral objection.

4 14. A final approval hearing shall be held before this Court on July 23, 2024 at 8:30 a.m.
5 in Department 42 at the Placer County Superior Court to hear the motion for final approval and the
6 motion for attorneys' fees and costs, and to determine all necessary matters concerning the
7 Settlement, including: whether the proposed settlement of the Action on the terms and conditions
8 provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the
9 Court; whether the Final Approval Order and Judgment should be entered herein; whether the plan
10 of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
11 Class Members; and to finally approve attorneys' fees and costs, service award, and the fees and
12 expenses of the Administrator. All papers in support of the motion for final approval and for
13 attorneys' fees, costs and service awards shall be filed with the Court and served on all counsel no
14 later than sixteen (16) court days before the hearing and the motion shall be heard at this final
15 approval hearing.

16 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
17 shall be construed as a concession or admission by Defendant in any way that the claims asserted
18 have any merit or that this Action was properly brought as a class or representative action, and shall
19 not be used as evidence of, or used against Defendant as, an admission or indication in any way,
20 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant or
21 with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is
22 finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or
23 conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be
24 construed as, offered or admitted in evidence as, received as or deemed to be evidence for any
25 purpose adverse to the Defendant, including, but not limited to, evidence of a presumption,
26 concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission,
27 concession or damage.

1 16. In the event the Settlement does not become effective in accordance with the terms of
2 the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
3 become effective for any reason, this Order shall be rendered null and void and shall be vacated, and
4 the Parties shall revert to their respective positions as of before entering into the Agreement, and
5 expressly reserve their respective rights regarding the prosecution and defense of this Action,
6 including all available defenses and affirmative defenses, and arguments that any claim in the
7 Action could not be certified as a class action and/or managed as a representative action. In such an
8 event, the Court's orders regarding the Settlement, including this Order, shall not be used or referred
9 to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the
10 Agreement with respect to the effect of the Agreement if it is not approved.

11 17. The Court reserves the right to adjourn or continue the date of the final approval
12 hearing and all dates provided for in the Agreement without further notice to Class Members and
13 retains jurisdiction to consider all further applications arising out of or connected with the proposed
14 Settlement.

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16 **IT IS SO ORDERED.**

17 Dated: _____

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HON. TRISHA HIRASHIMA
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

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PRELIMINARY APPROVAL ORDER