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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 SOUTHERN DIVISION

15 FRED SAFFIR and WILMA LIBAR, )  
On Behalf of Themselves and All Others )  
16 Similarly Situated, )

17 Plaintiffs, )

18 vs. )

19 IMPAC MORTGAGE HOLDINGS, )  
INC., JOSEPH R. TOMKINSON, )  
20 WILLIAM S. ASHMORE, RICHARD )  
J. JOHNSON, GRETCHEN D. )  
21 VERDUGO, RONALD M. )  
MORRISON, JAMES WALSH, )  
22 FRANK P. FILIPPS and LEIGH J. )  
ABRAMS, )

23 Defendants. )  
24

**VIA FAX**

No.

CLASS ACTION

COMPLAINT FOR VIOLATION OF  
THE FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

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**JURISDICTION AND VENUE**

1. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and Rule 10b-5.

2. Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements were made in or issued from this District. Impac Mortgage Holding, Inc.’s executive offices are located at 1401 Dove Street, Newport Beach, California, where the day-to-day operations of the Company are directed and managed.

**SUMMARY AND OVERVIEW**

3. This is a securities class action on behalf of all purchasers of the publicly traded securities of Impac Mortgage Holdings, Inc. (“Impac Mortgage” or the “Company”) between May 13, 2005 and August 9, 2005 (the “Class Period”), against Impac Mortgage and certain of its officers and directors including the Company’s Chairman and CEO, and President, for violations of the Securities Exchange Act of 1934 (the “1934 Act”).

4. Impac Mortgage was incorporated in 1995 and is headquartered in Newport Beach, California. The Company operates as a mortgage real estate investment trust (“REIT”), which engages in the acquisition, origination, sale, and securitization of nonconforming Alt-A mortgages. The Company’s operations include long-term investment, mortgage, and warehouse lending. The long-term investment operations primarily invest in adjustable rate and fixed rate Alt-A mortgages that are

1 acquired and originated by the mortgage operations. They also originate and invest in  
2 small-balance, multifamily residential mortgages. The mortgage operations acquire,  
3 originate, sell, and securitize primarily adjustable rate and fixed rate Alt-A mortgages,  
4 as well as sub-prime mortgages from correspondents, mortgage brokers, and retail  
5 customers. The warehouse lending operations provide short-term financing to  
6 mortgage loan originators, including the mortgage operations, by funding mortgages  
7 from their closing date until they are sold to preapproved investors. The Company has  
8 elected to qualify as a REIT for tax purposes and must distribute at least 90% of its  
9 taxable income to its stockholders, of which 85% must be distributed within the  
10 taxable year in order to avoid the imposition of an excise tax. Thus, the Company's  
11 projections and discussions of the Company's projected taxable income and dividend,  
12 together with the Company's dividend projections, were of critical importance to the  
13 market.

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18 5. During the Class Period, defendants made false and misleading  
19 statements regarding the Company's business and prospects, including its projected  
20 taxable income and projected dividend payouts, which were of critical importance to  
21 the market. For example, on May 13, 2005, the first day of the Class Period, the  
22 Company's shares reacted to defendants' claims that Impac Mortgage had actually  
23 *increased* its projections. On this news, the Company's shares rose as much as 20%  
24 on reports that the Company's quarterly profit would exceed even defendants' own  
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1 forecasts. The shares rose \$4 to \$22.07 in New York Stock Exchange composite  
2 trading, and traded as high as \$22.07 on June 17, 2005.

3  
4 6. On August 9, 2005, Impac Mortgage announced that it had posted a net  
5 loss of \$55 million, or \$(0.78) per share, versus a profit of \$143.2 million or \$2.17 per  
6 share. The Company also announced that it had now forecasted a cut in its dividend  
7 from \$0.75 per share to \$0.50 to \$0.60 per share in the third quarter. In reaction to  
8 this news, shares of Impac Mortgage fell \$2.39 per share, or 14.6%, on August 10,  
9 2005, to close at \$13.98 per share. As more of the Company's problems seeped into  
10 the market, the Company's shares continued to crumble in response, tumbling into the  
11 single digits by early October. Prior to these revelations, the Company's top officers  
12 and directors sold shares of their personal Impac Mortgage stock, reaping \$5 million  
13 in the process.

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17 7. Then, on October 13, 2005, after the public had digested the Company's  
18 "revised" financial position and the Company's shares had fallen 50% from their  
19 Class Period high, defendants made a last ditch effort to re-infuse life into the  
20 Company's ailing share price. Defendants announced that they would use the  
21 Company's cash to purchase (stave off further decline in) the Company's own stock.  
22 Defendants hoped this would diffuse the attention being drawn to them. The  
23 officers/directors of the Company have profited handsomely to the tune of millions of  
24 dollars in bonuses alone. By staving off further share decline by trying to "prop up"  
25 the Company's shares, they too could stave off a management overhaul.

1           8.     The true facts, which were known by each of the defendants but  
2 concealed from the investing public during the Class Period, were as follows:

3                   (a)     That the Company had no ability to achieve the Company's  
4 projections for Q3 2005 through Q4 2005 due to, among other things: (i) the Company  
5 experiencing material capital constraints growth; and (ii) the Company's margins  
6 being combined with laggings resets on short-term ARMS together with high  
7 prepayments;

8                   (b)     That even as the Company was projecting *Q3 2005* taxable EPS in  
9 excess of \$.50, defendants knew that key metrics like the rate of "prepayments" had  
10 already limited the Company's projected profitability, and had impacted the  
11 Company's ability to cover its Q3 2005 dividend of \$.45;

12                   (c)     The Company failed to properly account for the fair value of its  
13 derivative instruments;

14                   (d)     The Company's margins were negatively impacted by the rise in  
15 short-term interest rates and as a result, Impac Mortgage would not be able to sustain  
16 its dividend payouts;

17                   (e)     The Company lacked adequate internal controls;

18                   (f)     The Company's statements with respect to its financial condition  
19 and future prospects lacked any reasonable basis when made; and

20                   (g)     As a result of (a)-(f) above, the Company's Q3 and Q4 2005  
21 projections were grossly overstated. Equally false were the Company's statements

1 concerning the Company's concealment of mark-to-market accounting losses which  
2 ultimately required a charge of nearly \$100 million.

3  
4 9. As a result of the defendants' false statements, Impac Mortgage stock  
5 traded at inflated levels during the Class Period, whereby the Company's top officers  
6 and directors sold more than \$5 million worth of their own shares.

### 7 8 **THE PARTIES**

9 10. (a) Plaintiff Fred Saffir purchased Impac Mortgage publicly traded  
10 securities as described in the attached certification and was damaged thereby.

11 (b) Plaintiff Wilma Libar purchased Impac Mortgage publicly traded  
12 securities as described in the attached certification and was damaged thereby.

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14 11. Defendant Impac Mortgage operates as a mortgage REIT, which engages  
15 in the acquisition, origination, sale, and securitization of nonconforming Alt-A  
16 mortgages. The Company's operations include long-term investment, mortgage, and  
17 warehouse lending. The long-term investment operations primarily invest in  
18 adjustable rate and fixed rate Alt-A mortgages that are acquired and originated by the  
19 mortgage operations. They also originate and invest in small-balance, multifamily  
20 residential mortgages. The mortgage operations acquire, originate, sell, and securitize  
21 primarily adjustable rate and fixed rate Alt-A mortgages, as well as sub-prime  
22 mortgages from correspondents, mortgage brokers, and retail customers. The  
23 warehouse lending operations provide short-term financing to mortgage loan  
24 originators, including the mortgage operations, by funding mortgages from their  
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1 closing date until they are sold to preapproved investors. The Company has elected to  
2 qualify as a REIT for tax purposes and must distribute at least 90% of its taxable  
3 income to its stockholders, of which 85% must be distributed within the taxable year  
4 in order to avoid the imposition of an excise tax. Impac Mortgage Holdings was  
5 incorporated in 1995 and is headquartered in Newport Beach, California.  
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8 12. Defendant Joseph R. Tomkinson (“Tomkinson”) is Chairman and Chief  
9 Executive Officer of Impac Mortgage.

10 13. Defendant William S. Ashmore (“Ashmore”) is President and Chief  
11 Operating Officer of Impac Mortgage. During the Class Period, Ashmore sold  
12 107,535 shares of his Impac Mortgage stock for insider trading proceeds of more than  
13 \$2.1 million.  
14

15 14. Defendant Richard J. Johnson (“Johnson”) is Executive Vice President  
16 and Chief Financial Officer of Impac Mortgage. During the Class Period, Johnson  
17 sold 33,334 shares of his Impac Mortgage stock for insider trading proceeds of  
18 \$673,476.  
19

20 15. Defendant Gretchen D. Verdugo (“Verdugo”) is Executive Vice  
21 President and Chief Accounting Officer of Impac Mortgage. During the Class Period,  
22 Verdugo sold 30,000 shares of her Impac Mortgage stock for insider trading proceeds  
23 of \$587,100.  
24

25 16. Defendant Ronald M. Morrison (“Morrison”) is Executive Vice  
26 President, Secretary and General Counsel of Impac Mortgage. During the Class  
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1 Period, Morrison sold 36,666 shares of his Impac Mortgage stock for insider trading  
2 proceeds of more than \$739,813.

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4 17. Defendant James Walsh (“Walsh”) is a director of Impac Mortgage.  
5 During the Class Period, Walsh sold 21,666 shares of his Impac Mortgage stock for  
6 insider trading proceeds of \$440,470.

7  
8 18. Defendant Frank P. Filippis (“Filippis”) is a director of Impac Mortgage.  
9 During the Class Period, Filippis sold 20,000 shares of his Impac Mortgage stock for  
10 insider trading proceeds of \$406,800.

11  
12 19. Defendant Leigh J. Abrams (“Abrams”) is a director of Impac Mortgage.  
13 During the Class Period, Abrams sold 23,000 shares of his Impac Mortgage stock for  
14 insider trading proceeds of \$452,410.

15  
16 20. The individuals named as defendants in ¶¶12-19 are referred to herein as  
17 the “Individual Defendants.” The Individual Defendants, because of their positions  
18 with the Company, possessed the power and authority to control the contents of Impac  
19 Mortgage’s quarterly reports, press releases and presentations to securities analysts,  
20 money and portfolio managers and institutional investors, *i.e.*, the market. Each  
21 defendant was provided with copies of the Company’s reports and press releases  
22 alleged herein to be misleading prior to or shortly after their issuance and had the  
23 ability and opportunity to prevent their issuance or cause them to be corrected.  
24 Because of their positions and access to material non-public information available to  
25 them but not to the public, each of these defendants knew that the adverse facts  
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1 specified herein had not been disclosed to and were being concealed from the public  
2 and that the positive representations which were being made were then materially  
3 false and misleading. The Individual Defendants are liable for the false statements  
4 pleaded herein at, as those statements were each “group-published” information, the  
5 result of the collective actions of the Individual Defendants.  
6

### 7 8 **SCIENTER**

9 21. In addition to the above-described involvement, each Individual  
10 Defendant had knowledge of Impac Mortgage’s problems and was motivated to  
11 conceal such problems. Johnson, as CFO, was responsible for financial reporting and  
12 communications with the market. Many of the internal reports showing Impac  
13 Mortgage’s forecasted and actual growth were prepared by the finance department  
14 under Johnson’s direction. Defendants Tomkinson, as CEO and Chairman, and  
15 Ashmore, as President and COO, were responsible for the financial results and press  
16 releases issued by the Company. Walsh, Filippis and Abrams, the Company’s  
17 individual directors, who were hired to serve as protectors of tragedies, not only failed  
18 miserably but actually too, profited from their fraudulent insider selling. Each  
19 Individual Defendant sought to demonstrate that he could lead the Company  
20 successfully and generate the growth expected by the market.  
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22 22. Defendants were motivated to engage in the fraudulent practices alleged  
23 herein in order to obtain insider trading proceeds of more than \$5 million as well to  
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1 extract lucrative bonuses tied to the perception of quality earnings reported by the  
2 Company.

### 3 **FRAUDULENT SCHEME AND COURSE OF BUSINESS**

4 23. Each defendant is liable for (i) making false statements, *or* (ii) failing to  
5 disclose adverse facts known to him or her about Impac Mortgage. Defendants'  
6 fraudulent scheme and course of business that operated as a fraud or deceit on  
7 purchasers of Impac Mortgage publicly traded securities was a success, as it:  
8 (i) deceived the investing public regarding Impac Mortgage's prospects and business;  
9 (ii) artificially inflated the price of Impac Mortgage publicly traded securities;  
10 (iii) allowed defendants to obtain larger bonuses which were directly tied to the  
11 performance of Impac Mortgage shares (the Company's CFO alone receives more  
12 than 10 times<sup>1</sup> his compensation in the form of bonuses which were paid based upon  
13 the perception of growing quality earnings); (iv) allowed defendants to arrange to sell  
14 and actually sell in excess of \$5 million worth of Impac Mortgage stock at artificially  
15 inflated prices; and (v) caused plaintiffs and other members of the Class to purchase  
16 Impac Mortgage publicly traded securities at inflated prices.  
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### 22 **BACKGROUND**

23 24. Impac Mortgage operates as a mortgage REIT, which engages in the  
24 acquisition, origination, sale, and securitization of nonconforming Alt-A mortgages.  
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26 <sup>1</sup> Likewise, the Company's Chairman and Chief Executive Officer receives nine  
27 times his compensation in bonuses similarly tied to the *perception* of quality earning  
28 and accurate financial reporting.

1 The Company's operations include long-term investment, mortgage, and warehouse  
2 lending. The long-term investment operations primarily invest in adjustable rate and  
3 fixed rate Alt-A mortgages that are acquired and originated by the mortgage  
4 operations. They also originate and invest in small-balance, multifamily residential  
5 mortgages. The mortgage operations acquire, originate, sell, and securitize primarily  
6 adjustable rate and fixed rate Alt-A mortgages, as well as sub-prime mortgages from  
7 correspondents, mortgage brokers, and retail customers. The warehouse lending  
8 operations provide short-term financing to mortgage loan originators, including the  
9 mortgage operations, by funding mortgages from their closing date until they are sold  
10 to preapproved investors. The Company has elected to qualify as a REIT for tax  
11 purposes and must distribute at least 90% of its taxable income to its stockholders, of  
12 which 85% must be distributed within the taxable year in order to avoid the imposition  
13 of an excise tax.

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18 **DEFENDANTS' FALSE AND MISLEADING**  
19 **STATEMENTS ISSUED DURING THE CLASS PERIOD**

20 25. On May 13, 2005, the Company issued a press release entitled "Impac  
21 Mortgage Holdings, Inc. Reports First Quarter Net Earnings Per Diluted Share of  
22 \$2.23 for the First Quarter 2005 as Compared to \$0.15 for the First Quarter 2004;  
23 Estimated Taxable Income Per Diluted Common Share Was \$0.75 for the First  
24 Quarter 2005 as Compared to \$0.75 for the First Quarter 2004." The press release  
25 stated in part:  
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1 Impac Mortgage Holdings, Inc., a real estate investment trust (“REIT”),  
2 reports first quarter 2005 net earnings which increased to \$173.6 million,  
3 or \$2.23 per diluted share as compared to net earnings of \$9.4 million, or  
4 \$0.15 per diluted share, for the first quarter 2004. The increase in net  
5 earnings was primarily the result of a change in the value of the  
6 derivative instruments, whereby, the Company records the change as an  
7 expense or revenue in the current period. *First quarter 2005 estimated*  
8 *taxable income available to common stockholders was \$56.8 million or*  
9 *\$0.75 per diluted common share as compared to \$45.5 million or \$0.75*  
10 *per diluted common share, for the first quarter 2004. For a*  
11 *reconciliation of net earnings to estimated taxable income please refer*  
12 *to the enclosed schedule. The Company’s audited 2004 Form 10-K/A*  
13 *and first quarter 2005 Form 10-Q were filed after the Securities*  
14 *Exchange Commission (“SEC”) closed today and will be available on*  
15 *Monday, May 16, 2005.*

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21 *Mr. Joseph R. Tomkinson, Chairman and CEO of Impac*  
22 *Mortgage Holdings, Inc. commented, “While we have been operating*  
23 *in a very challenging interest rate and regulatory environment, we*  
24 *continue to believe that our fundamentals are solid and long term*  
25 *prospects for the Company remain positive.” Mr. Tomkinson further*  
26 *commented, “we continue to expect solid loan acquisitions and*  
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1           *originations and are currently on track to reach \$30.0 billion in total*  
2           *assets by the end of this year.”*

3           **Financial Highlights for First Quarter 2005**

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- 5           •       *Estimated taxable income per diluted share increased 10% to*  
6                 *\$0.75 compared to \$0.68 for the fourth quarter of 2004 and*  
7                 *\$0.75 for the first quarter of 2004;*
  - 8
  - 9           •       *Cash dividends declared per common share were \$0.75 for the*  
10                *first quarter of 2005 and the fourth quarter of 2004 and \$0.65*  
11                *for the first quarter of 2004;*
  - 12
  - 13           •       *Total assets increased to \$25.7 billion as of March 31, 2005 from*  
14                *\$23.8 billion as of December 31, 2004 and \$12.9 billion as of*  
15                *March 31, 2004;*
  - 16
  - 17           •       Book value per share increased 13% to \$13.31 as of March 31,  
18                2005 compared to \$11.80 as of December 31, 2004 and \$8.96 as  
19                of March 31, 2004.
  - 20

21           26.   Defendants’ false and misleading statements had the intended effect and  
22           caused Impac Mortgage publicly traded securities to trade at artificially inflated levels,  
23           trading as high as \$22.07 per share on June 17, 2005.

24

25           27.   With the Company’s shares trading at new highs, defendants Abrams,  
26           Ashmore, Filipps, Johnson, Morrison, Verdugo and Walsh quickly extracted \$5  
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1 million in insider trading profits, selling 272,201 Impac Mortgage shares at prices as  
2 high as \$21 (pennies from the Class Period high).

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4 28. On June 28, 2005, the Company issued a press release entitled “Impac  
5 Mortgage Holdings, Inc. Announces Second Quarter 2005 Dividend Payment of \$0.75  
6 per Common Share.” The press release stated in part:

7  
8 Joseph R. Tomkinson, Chairman and CEO of Impac Mortgage Holdings,  
9 Inc., a Maryland corporation, being taxed as a Real Estate Investment  
10 Trust (“REIT”), is pleased to announce the Board of Directors’ approval  
11 and declaration of the 2005 second quarter dividend of \$0.75 per  
12 common share. The second quarter dividend will be paid on July 15,  
13 2005 to stockholders of record on July 8, 2005. The ex-dividend date  
14 will be July 6, 2005. Therefore, new stockholders interested in receiving  
15 the 2005 second quarter dividend must purchase common stock on or  
16 before July 5, 2005.

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19 Mr. Tomkinson commented, “Although the Company continues to  
20 experience strong mortgage acquisitions and originations and solid asset  
21 growth to \$27.0 billion, market conditions have resulted in industry wide  
22 unprecedented prepayments speeds and compression of our adjusted net  
23 interest margins.” Mr. Tomkinson further commented, “*While the*  
24 *Company has declared a dividend of \$0.75 per common share for the*  
25 *second quarter, we expect estimated taxable income for the quarter to*  
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1           *be less than the dividend declared. Based on current trends, the*  
2           *Company expects to re-evaluate its dividend policy during the third*  
3           *quarter of 2005.”*

4  
5           29. On August 9, 2005, following defendants reaping over \$5 million in  
6 insider trading proceeds, they dropped a bomb on investors revealing that not only  
7 were the Company’s projections false, but also the Company’s own accounting for the  
8 its derivatives. The Company issued a press release entitled “Impac Mortgage  
9 Holdings, Inc. Reports Second Quarter Results,” announcing that it had posted a net  
10 loss of \$55 million, or \$(0.78) per share, versus a profit of \$143.2 million or \$2.17 per  
11 share. The Company also announced that it had now forecasted a cut in its dividend  
12 from \$0.75 per share to \$0.50 to \$0.60 per share in Q3 2005. The press release stated  
13 in part:

14           Impac Mortgage Holdings, Inc., a real estate investment trust (“REIT”),  
15           reports second quarter 2005 net earnings (loss) which decreased to a loss  
16           of (\$55.0) million, or (\$0.78) per share, as compared to net earnings of  
17           \$143.2 million, or \$2.17 per diluted share, for the second quarter 2004.  
18           *The decrease in net earnings was primarily the result of a (\$97.7)*  
19           *million unrealized mark-to-market change in the fair value of our*  
20           *derivative instruments, whereby, the Company records the change in*  
21           *fair value of its derivatives as an expense or revenue in the current*  
22           *period.*

1            *Second quarter 2005 estimated taxable income available to*  
2            *common stockholders, which excludes the unrealized mark-to-market*  
3            *gain (loss) on derivatives in addition to among other timing*  
4            *differences, was \$41.1 million or \$0.54 per diluted common share as*  
5            *compared to \$57.6 million or \$0.87 per diluted common share, for the*  
6            *second quarter 2004. As a REIT, we pay dividends to our stockholders*  
7            *based on taxable income. For differences between net earnings (loss)*  
8            *as determined by generally accepted accounting policies (“GAAP”)*  
9            *and estimated taxable income, please refer to the enclosed schedule.*  
10           *The Company filed its Form 10-Q with the Securities Exchange*  
11           *Commission (“SEC”) which includes additional financial information*  
12           *for the second quarter 2005. The Company’s Form 10-Q is also*  
13           *available on our website at [www.impaccompanies.com](http://www.impaccompanies.com) under*  
14           *stockholder relations.*

## 19           **Outlook**

20           *Mr. Joseph R. Tomkinson, Chairman and CEO of Impac*  
21           *Mortgage Holdings, Inc. commented, “The mortgage industry*  
22           *continues to experience net interest margin compression from further*  
23           *increases in short term interest rates, continued flattening of the yield*  
24           *curve, heightened prepayment speeds and competitive pricing*  
25           *pressures. Despite this challenging environment, the Company’s*  
26           *pressures. Despite this challenging environment, the Company’s*  
27           *pressures. Despite this challenging environment, the Company’s*  
28           *pressures. Despite this challenging environment, the Company’s*



- 1 • *Based upon our current projections, we believe that the third*  
2 *quarter dividend should range between \$0.50 to \$0.60 per*  
3 *common share Financial Highlights for Second Quarter 2005;*
- 4 • *Estimated taxable income per diluted share decreased to \$0.54*  
5 *compared to \$0.75 for the first quarter of 2005 and \$0.87 for the*  
6 *second quarter of 2004;*
- 7 • *Cash dividends declared per common share were \$0.75 for the*  
8 *second and first quarters of 2005 as compared to \$0.75 for the*  
9 *second quarter of 2004.*

10 30. In reaction to this news, shares of Impac Mortgage fell \$2.39 per share,  
11 or 14.6%, on August 10, 2005, to close at \$13.98 per share.  
12

13 31. During the Class Period, defendants made false and misleading  
14 statements regarding the Company's business and prospects. The true facts, which  
15 were known by each of the defendants but concealed from the investing public during  
16 the Class Period, were as follows:  
17

18 (a) That the Company had no ability to achieve the Company's  
19 projections for Q3 2005 through Q4 2005 due to, among other things: (i) the Company  
20 experiencing material capital constraints growth; and (ii) the Company's margins  
21 being combined with laggings resets on short-term ARMS together with high  
22 prepayments;  
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1 (b) That even as the Company was projecting *Q3 2005* taxable EPS in  
2 excess of \$.50, defendants knew that key metrics like the rate of “prepayments” had  
3 already limited the Company’s projected profitability, and impacted the Company’s  
4 ability to cover its Q3 2005 dividend of \$.45;

6 (c) The Company failed to properly account for the fair value of its  
7 derivative instruments;

9 (d) The Company’s margins were negatively impacted by the rise in  
10 short-term interest rates and as a result, Impac Mortgage would not be able to sustain  
11 its dividend payouts;

13 (e) The Company lacked adequate internal controls;

14 (f) The Company’s statements with respect to its financial condition  
15 and future prospects lacked any reasonable basis when made; and

17 (g) As a result of (a)-(f) above, the Company’s Q3 and Q4 2005  
18 projections were grossly overstated. Equally false were the Company’s statements  
19 concerning the Company’s concealment of mark-to-market accounting losses which  
20 ultimately required a charge of nearly \$100 million.

### 22 **POST CLASS PERIOD REVELATIONS**

23 32. On October 13, 2005, after the public had digested the Company’s  
24 “revised” financial position, wherein defendants revealed the problems at the  
25 Company were more serious than earlier advised and the Company’s shares had fallen  
26 50% from their Class Period high, defendants made a last ditch effort to re-infuse life  
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1 into the Company's ailing share price. Defendants announced that they would use the  
2 Company's cash to purchase (stave off further decline in) the Company's own stock.  
3  
4 Defendants hoped this would diffuse the attention being drawn to them. These  
5 officers/directors of the Company have profited handsomely to the tune of millions of  
6 dollars in bonuses alone. By staving off further share decline by trying to "prop up"  
7  
8 the Company's shares, they too could stave off a management overhaul.

### 9 **ADDITIONAL SCIENTER ALLEGATIONS**

10 33. As alleged herein, defendants acted with scienter in that defendants knew  
11 that the public documents and statements issued or disseminated in the name of the  
12 Company were materially false and misleading; knew that such statements or  
13 documents would be issued or disseminated to the investing public; and knowingly  
14 and substantially participated or acquiesced in the issuance or dissemination of such  
15 statements or documents as primary violations of the federal securities laws. As set  
16 forth elsewhere herein in detail, defendants, by virtue of their receipt of information  
17 reflecting the true facts regarding Impac Mortgage, their control over, and/or receipt  
18 and/or modification of Impac Mortgage's allegedly materially misleading  
19 misstatements and/or their associations with the Company which made them privy to  
20 confidential proprietary information concerning Impac Mortgage, participated in the  
21 fraudulent scheme alleged herein.  
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26 34. Defendants were further motivated to engage in this course of conduct in  
27 order to enable Abrams, Ashmore, Filipps, Johnson, Morrison, Verdugo and Walsh to  
28

1 sell 272,201 shares of their personally held Impac Mortgage stock and thereby reap  
2 over \$5 million in gross proceeds together with even more in the form of bonuses  
3 based on their presentation of the Company as one with quality earnings and internal  
4 controls.  
5

6 **LOSS CAUSATION/ECONOMIC LOSS**

7 35. During the Class Period, as detailed herein, defendants engaged in a  
8 scheme to deceive the market and a course of conduct that artificially inflated Impac  
9 Mortgage's stock price and operated as a fraud or deceit on Class Period purchasers of  
10 Impac Mortgage stock by misrepresenting the Company's business success and future  
11 business prospects. Defendants achieved this façade of success, growth and strong  
12 future business prospects by misrepresenting the Company's financial statements,  
13 earnings and prospects. Later, however, when defendants' prior misrepresentations  
14 and fraudulent conduct were disclosed and became apparent to the market, Impac  
15 Mortgage stock fell precipitously as the prior artificial inflation came out of Impac  
16 Mortgage's stock price. As a result of their purchases of Impac Mortgage stock  
17 during the Class Period, plaintiffs and other members of the Class suffered economic  
18 loss, *i.e.*, damages, under the federal securities laws.  
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23 **COUNT I**

24 **For Violation of §10(b) of the 1934 Act and Rule 10b-5**  
25 **Against All Defendants**

26 36. Plaintiffs incorporate ¶¶1-35 by reference.  
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1           37. During the Class Period, defendants disseminated or approved the false  
2 statements specified above, which they knew or deliberately disregarded were  
3 misleading in that they contained misrepresentations and failed to disclose material  
4 facts necessary in order to make the statements made, in light of the circumstances  
5 under which they were made, not misleading.  
6

7           38. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

8                   (a) Employed devices, schemes, and artifices to defraud;

9                   (b) Made untrue statements of material facts or omitted to state  
10 material facts necessary in order to make the statements made, in light of the  
11 circumstances under which they were made, not misleading; or  
12

13                   (c) Engaged in acts, practices, and a course of business that operated  
14 as a fraud or deceit upon plaintiffs and others similarly situated in connection with  
15 their purchases of Impac Mortgage common stock during the Class Period.  
16

17           39. Plaintiffs and the Class have suffered damages in that, in reliance on the  
18 integrity of the market, they paid artificially inflated prices for Impac Mortgage  
19 common stock. Plaintiffs and the Class would not have purchased Impac Mortgage  
20 publicly traded securities at the prices they paid, or at all, if they had been aware that  
21 the market prices had been artificially and falsely inflated by defendants' misleading  
22 statements.  
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1 benefits to the parties and the Court. Impac Mortgage had more than 76 million  
2 shares of stock outstanding, owned by hundreds if not thousands of persons.

3  
4 45. There is a well-defined community of interest in the questions of law and  
5 fact involved in this case. Questions of law and fact common to the members of the  
6 Class which predominate over questions which may affect individual Class members  
7 include:

- 8  
9 (a) Whether the 1934 Act was violated by defendants;  
10 (b) Whether defendants omitted and/or misrepresented material facts;  
11 (c) Whether defendants' statements omitted material facts necessary to  
12 make the statements made, in light of the circumstances under which they were made,  
13 not misleading;  
14 (d) Whether defendants knew or deliberately disregarded that their  
15 statements were false and misleading;  
16 (e) Whether the price of Impac Mortgage publicly traded securities  
17 was artificially inflated; and  
18 (f) The extent of damage sustained by Class members and the  
19 appropriate measure of damages.  
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24 46. Plaintiffs' claims are typical of those of the Class because plaintiffs and  
25 the Class sustained damages from defendants' wrongful conduct.  
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