

**NOTICE OF SETTLEMENT**

**If you were a borrower with a loan secured by a property in Massachusetts and were assessed two or more late fees by EMC Mortgage Corporation ("EMC") at any time during the period from December 1, 2005 through March 31, 2011, you may benefit from a proposed Class Action Settlement.**

**READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE CHECK THE SETTLEMENT WEBSITE AT [WWW.EMCMORTGAGESSETTLEMENT.COM](http://WWW.EMCMORTGAGESSETTLEMENT.COM) REGULARLY FOR UPDATES AND FURTHER DETAILS.**

*The Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

**You May be Entitled to Receive Compensation Under this Class Action Settlement.**

- A settlement (the "Settlement") has been reached in a class action lawsuit entitled *Robert L. Nicholls and Gwendolyn A. Hogan-Nicholls v. EMC Mortgage Corp.*, Case No. 11-cv-12303-PBS (D. Mass.), involving claims that EMC Mortgage LLC, formerly known as EMC Mortgage Corporation ("EMC"), violated Mass. Gen. Law Ann. ch. 183 § 59 ("Section 59") by assessing late fees on payments that plaintiffs' allege would have been timely and sufficient but for EMC's practice of applying payments received to the oldest outstanding installment due.
- An example of the alleged conduct, based on plaintiffs' interpretation of Section 59, is as follows: If a borrower failed to make a payment in January and had a late fee assessed, and the borrower subsequently made one full payment, EMC would credit the payment for January and assess a second late fee for non-payment of the February bill.
- EMC denies Plaintiffs' allegations and interpretation of Section 59, and denies any liability or wrongdoing, and the Court has not decided whether EMC did anything wrong. The Court has, however, preliminarily approved the settlement which affects your legal rights and you have a choice to make now.
- The Settlement will provide for a fund of \$570,000 to pay for a portion of the late fees that were assessed and paid, plus attorneys' fees and disbursements to be approved by the Court, an enhancement payment to the Class Representatives and the costs of administering the Settlement.
- Your legal rights are affected whether you act or do not act. Please read this notice carefully.

**YOUR RIGHTS AND CHOICES:**

<i><b>YOU MAY:</b></i>		<i><b>DUE DATE</b></i>
<b>DO NOTHING</b>	If you do nothing and you receive an award, you will be giving up rights you may have to separately sue the "Released Parties" (as defined by paragraph 1.38 the Settlement) for legal claims released by the Settlement.	<b>N/A</b>
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement.	<b>February 16, 2014</b>
<b>EXCLUDE YOURSELF</b>	Ask to be excluded from the Settlement. This is the only option that allows you to be part of any other lawsuit against the Released Parties for legal claims released by this Settlement.	<b>February 16, 2014</b>
<b>APPEAR IN THE LAWSUIT OR GO TO A HEARING</b>	Participate in the lawsuit on your own or through your own lawyer. You can also ask to speak in Court about the proposed Settlement.	<b>March 5, 2014</b>

- These rights and choices – **and the deadlines to exercise them** – are further explained in this Notice.
- These **deadlines may be moved, cancelled or otherwise modified**, so please check the settlement website at [www.EMCMortgageSettlement.com](http://www.EMCMortgageSettlement.com) regularly for updates and further details.
- The Court still has to decide whether to approve to grant final approval of the Settlement. Benefits will be provided only if the Court finally approves the Settlement and after any appeals are resolved.

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## BASIC INFORMATION

### 1. Why did I receive a Notice?

The Court ordered that a Notice be given because you have the right to know about a proposed Settlement that may affect you. You have legal rights and choices to make before the Court decides whether to approve the proposed Settlement.

This Notice explains:

- What the lawsuit is about.
- Who is included in the proposed Settlement.
- How the proposed Settlement may benefit you.
- What your legal rights are
- How to get benefits of the proposed Settlement.

### 2. What is the lawsuit about?

This lawsuit is brought as a class action entitled *Robert L. Nicholls and Gwendolyn A. Hogan-Nicholls v. EMC Mortgage Corp.*, Case No. 11-cv-12303-PBS (D. Mass.) and is presently before the United States District Court for the District of Massachusetts. The lawsuit alleges that EMC Mortgage LLC, formerly known as EMC Mortgage Corporation ("EMC"), violated Mass. Gen. Law Ann. ch. 183 § 59 ("Section 59") by assessing late fees on payments that plaintiffs allege would have been timely and sufficient but for EMC's practice of applying payments received to the oldest outstanding installment due.

An example of the alleged conduct is as follows: If a borrower failed to make a payment in January and had a late fee assessed, and the borrower subsequently made one full payment, EMC would credit the payment for January and assess a second late fee for non-payment of the February bill.

EMC denies Plaintiffs' allegations and interpretation of Section 59, and denies any liability or wrongdoing.

The Court overseeing this lawsuit is the United States District Court for the District of Massachusetts and specifically the Honorable Patti B. Saris.

### 3. What is a class action, and why is this lawsuit a class action?

In a class action, one or more people, called Class Representatives, sue on behalf of other people who have similar claims. All these people together are a "Class" or "Class Members." One court decides all the issues in the lawsuit for all Class Members, except for those who exclude themselves from the Class. In a class action, the court has a responsibility to assure that prosecution and resolution of the class claims by the Class Representatives and Class Counsel is fair. In this lawsuit, the Class Representatives are asking the Court to decide the issues for borrowers with loans secured by properties in Massachusetts and who were assessed two or more late fee charges by EMC at any time during the period from December 1, 2005 through March 31, 2011 (the "Class Period").

### 4. Why is there a proposed Settlement?

The Court did not decide in favor of the Plaintiffs or EMC. Instead, both sides agreed to the Settlement. That way, they avoid the cost and risk of further litigation, and the people claimed to be affected will get compensation. The Class Representatives and their attorneys, the Class Counsel, believe that a class wide settlement is in the best interests of the Settlement Class.

## WHO IS IN THE PROPOSED SETTLEMENT CLASS

### 5. How do I know if I am part of the proposed Settlement Class?

If you have received a postcard notice, you possibly are a Settlement Class Member. Judge Saris has determined that everyone who fits the below description is a Class Member:

All borrowers with loans secured by properties in Massachusetts and were assessed two or more late fee charges by EMC at any time during the period December 1, 2005 through March 31, 2011, and who are identified on the Class List.

## 6. Are there exceptions to being included?

Yes. The Settlement Class does not include all persons who opt-out or exclude themselves from the Settlement in a timely and correct manner by submitting a written request for exclusion. This Settlement Class also excludes the judge presiding over this matter from participation.

## THE PROPOSED SETTLEMENT BENEFITS – WHAT DO I GET?

## 7. What does the proposed Settlement provide?

Subject to final approval, each member of the Settlement Class ("Settlement Class Member") who does not opt out may receive: (i) a waiver of certain outstanding late fees on their loan account; and/or (ii) an automatic payment from a portion of the Settlement Fund as reflected below.

**The Waiver.** Settlement Class Members who have not opted out may receive a waiver of certain late fees that have been assessed but not collected. Those Loan accounts to receive waivers will be those Settlement Class Members' accounts that, as of the date after the Final Approval of the Settlement: (a) reflect a principal balance greater than zero on the servicing system used to service the account; and (b) have an outstanding late fee balance.

The amount of the late fee waiver for each loan account will be determined as follows: (a) identification of the amount of late fees assessed by EMC during the Class Period, then (b) reduction of the EMC late fee assessment amount to the extent late fees have been paid, waived or refunded on the Loan account (assuming for purposes of this Settlement that payments, waivers and refunds were on the first assessed late fees) through the date of the Settlement Agreement. The amount remaining for the loan account is the maximum waiver amount for the loan.

Each Settlement Class Member to receive a waiver will receive up to the maximum waiver amount for the Loan to the extent there is an outstanding late fee balance on the Loan account. EMC reserves the right to apply a different waiver analysis and process so long as doing so does not reduce the benefit to the Settlement Class Member.

**The Monetary Award.** The Monetary Award that will be payable to Settlement Class Members after the date when the Settlement becomes effective will be determined according to the following formula:

- (a) Step One – Determination of the Net Settlement Fund. The Net Settlement Fund shall be calculated by taking the Settlement Fund (\$570,000.00) and subtracting Administration Costs, Representative Plaintiffs' Award, and the Attorneys' Fee Award.
- (b) Step Two – Determination of the pro rata shares. There shall be five tiers of participation in the Settlement based upon the amount of late fee payments made (without consideration of any prior reversals, credits or refunds):
  - i. Less than \$ 50.01 --- 1 share
  - ii. Between \$ 50.01 and \$ 100.00 --- 2 shares
  - iii. Between \$ 100.01 and \$ 150.00 --- 3 shares
  - iv. Between \$150.01 and \$ 500.00 --- 6 shares
  - v. Greater than \$ 500.00 --- 10 shares
- (c) Step Three – Determination of the dollar payments per share shall be made by taking the Net Settlement Fund and dividing it by the total number of shares.
- (d) Step Four – Calculation of the individual award. Take the number of shares for each Settlement Class Member and multiply that number by the dollar payments per share.

**After the Monetary Award is determined in accordance with the above formula, this will constitute the absolute maximum amount that any Monetary Award Recipient will be entitled to receive under this Settlement.**

## 8. What am I giving up in exchange for the Settlement Benefits?

By staying in the Class, you become a Settlement Class Member and, you qualify for either a Waiver and/or Monetary Award, you are agreeing to fully, finally and forever release, relinquish, and discharge any current or future claims relating to the late charge claims in this action (**as more fully described in the paragraph below**) against the Released Parties, and each and all of their respective past, present, and future parents, subsidiaries, affiliated companies and corporations, and each and all of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each and all of their

respective executors, successors, assigns, and legal representatives.

The entire release contained in Section 14.1 of the Settlement is:

As of the Effective Date of this Agreement, the Representative Plaintiffs on their own behalf, and on behalf of each Participating Class Member who is a member of the Releasing Parties, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of and from any and all Settled Class Claims (as defined above) and, without further action by any person, they will be deemed (i) to have consented to dismiss with prejudice any and all Settled Class Claims; and (ii) to have released and forever discharged any and all Settled Class Claims. The Releasing Parties are forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever (including any state or federal court, or with any state, federal or local government agency or with any administrative or advisory body), suits, debts, liens, or claims, known or unknown, fixed or contingent, which the Releasing Parties may have or claim to have in asserting the Settled Class Claims. The Releasing Parties understand and agree that they are providing the Released Parties with a full and complete release with respect to the Settled Class Claims.

### HOW TO GET PROPOSED SETTLEMENT BENEFITS

#### 9. How do I get an award?

To obtain your award, you do not have to do anything. If you do not exclude yourself from the Settlement and you qualify for an award, you will be mailed a check as provided by the Settlement and/or unpaid late fees will be waived from your loan account once the Settlement is finally approved by the Court, and after any appeals are resolved.

#### 10. When will I get my award?

A review of your account for the waiver award and the mailing of any monetary award will occur after the Court grants "final approval" of the Settlement, and after the time for appeals has ended and any appeals have been resolved. Even if the judge approves the Settlement after a hearing on **March 5, 2013** (see the section "The Court's Fairness Hearing" below), there may be appeals. Resolving these appeals can take time. Please be patient.

### EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

#### 11. Can I get out of the proposed Settlement and the Class?

If you want to keep the right to sue or continue to sue EMC over the legal issues in this case, you must take steps to get out of the Settlement. This is called excluding yourself – or is sometimes referred to as "opting out" of the Class. If you exclude yourself, you cannot get any benefits from the proposed Settlement and you cannot object to the proposed Settlement. But you keep the right to file your own lawsuit or join another lawsuit against EMC about the claims in this lawsuit.

#### 12. How do I exclude myself from the proposed Settlement?

To exclude yourself, you must send a letter that contains all of the following:

- Your name, current address and telephone number;
- A statement that you want to be excluded from the case *Robert L. Nicholls and Gwendolyn A. Hogan-Nicholls v. EMC Mortgage Corp.*, Case No. 11-cv-12303-PBS (D. Mass.), that you do not wish to be a Settlement Class Member, and that you want to be excluded from any judgment entered in this case;
- Your signature (or your lawyer's signature).

Your exclusion request must be signed, mailed and ***postmarked by February 16, 2014***, to:

EMC Massachusetts Late Fee Settlement  
c/o: GCG  
P.O. Box 35104  
Seattle, WA 98124-5104

You cannot exclude yourself on the phone or by e-mail.

**13. If I do not exclude myself, can I sue later?**

No. Unless you exclude yourself, you give up the right to sue EMC for the claims in this lawsuit. If you want to keep the right to sue EMC in a new lawsuit, you have to exclude yourself from this Settlement Class and proposed Settlement. Remember, any exclusion request must be signed, mailed, and postmarked by **February 16, 2014**.

**14. If I exclude myself, can I get any benefits from this proposed Settlement?**

No. If you exclude yourself, you cannot get any proposed Settlement benefits.

**YOUR RIGHTS AND CHOICES - OBJECTING TO THE PROPOSED SETTLEMENT**

**15. How do I tell the Court I do not like the Settlement?**

If you are a Settlement Class Member and do not exclude yourself, you can tell the Court you do not like the Settlement or some part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views.

To object, you must send a written objection setting forth your full name, current address, and telephone number to the Settlement Administrator and send by U.S. mail a copy to Class Counsel and Defense Counsel postmarked no later than **February 16, 2014**. Please use the following addresses:

Settlement Administrator

EMC Massachusetts Late Fee  
Settlement  
c/o GCG  
P.O. Box 35104  
Seattle, WA 98124-5104

Class Counsel:

Richard L. Kellner  
KABATECK BROWN KELLNER, LLP  
644 S. Figueroa Street  
Los Angeles, California 90017

Defense Counsel:

Danielle J. Szukala  
BURKE, WARREN, MACKAY &  
SERRITELLA, P.C.  
330 North Wabash Avenue  
21st Floor  
Chicago, IL 60611.

You must also state in writing all objections and the reasons for each objection, and state whether you intend to appear at the Fairness Hearing either with or without separate counsel. You shall not be entitled to be heard at the Fairness Hearing or to object to the Settlement, and no written objections or briefs submitted by you shall be received or considered by the Court at the Fairness Hearing, unless written notice of your intention to appear at the Fairness Hearing and copies of any written objections and/or briefs are filed with the Court and served on Class Counsel and Defense Counsel on or before **February 16, 2014**. If you fail to file and serve timely written objections in the manner specified above, you shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

If you object through a lawyer, you will have to pay for the lawyer yourself.

**16. What is the difference between objecting to the Settlement and excluding myself from the proposed Settlement?**

Objecting is the way to tell the Court what you do not like about Settlement. You can object only if you stay in the Class and don't exclude yourself.

Excluding yourself is the way to tell the Court you do not want to be a part of the Class and the Settlement, and that you want to keep the right to file your own lawsuit. If you exclude yourself, you cannot object because the proposed Settlement no longer will affect you.

**YOUR RIGHTS AND CHOICES - APPEARING IN THE LAWSUIT**

**17. Can I appear or speak in this lawsuit?**

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit. This is called making an appearance. You can also have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

## 18. How can I appear in this lawsuit?

If you want to participate (or have your own lawyer instead of Class Counsel participate or speak for you) in this lawsuit, you must give the Court a paper that is titled a "Notice of Appearance." The Notice of Appearance must contain the title of the lawsuit, a statement that you wish to appear at the Fairness Hearing and the signature of you or your lawyer.

Your Notice of Appearance can also state that you or your lawyer would like to speak at the Court's hearing on the proposed Settlement. If you submit an objection (see question 17 above) and would like to speak about the objection at the Court's hearing, both your Notice of Appearance and your objection should include that information too.

Your Notice of Appearance must be signed, mailed and *postmarked by February 16, 2014*, to the Court at:

Clerk of Court  
U.S. District Court District of Massachusetts  
1 Courthouse Way  
Boston, Massachusetts 02210

Copies of your Notice of Appearance must also be signed, mailed, emailed, or faxed and postmarked, or the equivalent for email and facsimile, by **February 16, 2014**, to the same addresses listed in response to in question 15 of this Notice

### IF YOU DO NOTHING

## 19. What happens if I do nothing at all?

If you do nothing:

- You will stay a member of the Settlement Class and all of the Court's orders will apply to you.
- You will automatically receive any awards you qualify for under the Settlement.
- Unless you exclude yourself, you will not be able to sue, or join a new lawsuit, against EMC about the issues and claims in this lawsuit, ever again if you qualify for an award.

### THE LAWYERS REPRESENTING YOU

## 20. Do I have a lawyer in this case?

Yes. The Court has appointed lawyers to represent you and all Settlement Class Members. The Court has appointed the following law firms to represent the Settlement Class:

KABATECK BROWN KELLNER, LLP  
Richard L. Kellner  
Evan Zucker  
644 S. Figueroa Street  
Los Angeles, California 90017  
Telephone: (213) 217-5000  
Facsimile: (213) 217-5010

THE WENTZ LAW FIRM  
Richard Wentz  
Jean Wentz  
2955 East Hillcrest Drive  
Suite 123  
Thousand Oaks, CA 91362

BLOCK & LEVITON LLP  
Jeffrey C Block  
Whitney E. Street  
155 Federal Street, Suite 1303  
Boston, MA 02110

COHEN MILSTEIN SELLERS & TOLL PLLC  
Andrew Friedman  
Douglas McNamara  
1100 New York Ave NW, Suite 500 West  
Washington, DC 20005

Together, these lawyers are called Class Counsel. You will not be charged for these lawyers.

## 21. How much will lawyers for the Class be paid and how will they be paid?

Class Counsel will ask the Court to approve payment of attorneys' fees and expenses of no more than \$185,000, plus costs. Class Counsel also will ask the Court to award the Class Representatives a total of \$3,000.00. These amounts, plus the costs of administering the Settlement (estimated to be approximately \$30,000.00), will be paid from the Settlement Fund.

## THE COURT'S FAIRNESS HEARING

### 22. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Fairness Hearing at 2:30 p.m. on **March 5, 2014**. This hearing date may be moved, cancelled or otherwise modified, so please check the settlement website at [www.EMCMortgageSettlement.com](http://www.EMCMortgageSettlement.com) regularly for further details. The Court is located at 1 Courthouse Way, Boston, Massachusetts 02110. At the hearing, the judge will consider all objections, if any, and will consider whether the proposed Settlement is fair, reasonable and adequate to the Class. The judge will listen to people who have asked to speak at the hearing. The judge may also decide how much to award to Class Counsel for their fees and expenses. At or after the hearing, the judge will decide whether to approve the Settlement. We do not know how long these decisions will take.

### 23. Do I have to come to the hearing?

You do not have to come to the hearing. Class Counsel will answer any questions from the Court. But you and/or your lawyer are welcome to come at your own expense. If you send an objection, you do not have to come to the hearing for the judge to consider it.

### 24. Can I speak at the hearing?

You can ask the Court to allow you (or your lawyer) to speak at the hearing. To do so, you or your lawyer must file a Notice of Appearance that says you wish to speak. Information about how to file a Notice of Appearance, and the due date for filing, is in response to question 18 of this Notice. If you submit an objection and wish to speak about it at the Fairness Hearing, you must include that information in your objection (see question 15).

You cannot speak at the hearing if you exclude yourself from the Settlement.

## GETTING MORE INFORMATION

### 25. Are more details about the lawsuit and the Settlement available?

This Notice only summarizes the lawsuit and proposed Settlement. More details are in the complaint filed in lawsuit and in the proposed Settlement. You can get copies of these documents by visiting the Settlement website at [www.EMCMortgageSettlement.com](http://www.EMCMortgageSettlement.com).

You can also look at all of the documents filed in the lawsuit at the Clerk of Court, United States District Court, District of Massachusetts, located at 1 Courthouse Way, Boston, Massachusetts 02210.

You may also contact Class Counsel.

**PLEASE DO NOT CONTACT THE COURT WITH ANY QUESTIONS.**