

1 **AEGIS LAW FIRM, PC**  
 2 KASHIF HAQUE, State Bar No. 218672  
 3 SAMUEL A. WONG, State Bar No. 217104  
 4 JESSICA L. CAMPBELL, State Bar No. 280626  
 5 FAWN F. BEKAM, State Bar No. 307312  
 6 fbekam@aegislawfirm.com  
 7 9811 Irvine Center Drive, Suite 100  
 8 Irvine, California 92618  
 9 Telephone: (949) 379-6250  
 10 Facsimile: (949) 379-6251

11 Attorneys for Plaintiff Susana Valdez,  
 12 individually, and on behalf of all others similarly situated

13 CHRISTOPHER W. DECKER, CA Bar No. 229426  
 14 OGLETREE, DEAKINS, NASH,  
 15 SMOAK & STEWART, P.C.  
 16 400 South Hope Street, Suite 1200  
 17 Los Angeles, CA 90071  
 18 Telephone: 213.239.9800  
 19 Facsimile: 213.239.9045

20 Attorneys for Defendant  
 21 FAIRWAY INDEPENDENT MORTGAGE CORPORATION

22  
 23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 24 **FOR THE COUNTY OF SAN DIEGO**

25 SUSANA VALDEZ, individually and on behalf  
 26 of all others similarly situated,

27 Plaintiff,

28 vs.

29 FAIRWAY INDEPENDENT MORTGAGE  
 30 CORPORATION, a Texas corporation; and  
 31 DOES 1 through 20, inclusive,

32 Defendants.

Case No. 37-2018-00053677-CU-OE-CTL  
 (consolidated with Case No. 37-2019-  
 00003139-CU-OE-CTL)

*Assigned for all purposes to:  
 Hon. Kenneth J. Medel, Dept. C-66*

**SECOND AMENDMENT TO  
 SETTLEMENT AGREEMENT**

1 Plaintiff Susana Valdez (“Named Plaintiff”) on behalf of herself and all others similarly  
2 situated, and other aggrieved employees pursuant to the California Private Attorneys General Act,  
3 and Defendant Fairway Independent Mortgage Corporation (“Defendant”), pursuant to Section 24.5  
4 of the Settlement Agreement (“Agreement” or “Settlement”), hereby agree to amend and supplant  
5 the Agreement as stated herein. The amendments stated herein are incorporated in the Agreement  
6 by this reference:

7  
8 **ARTICLE 1, Section 1.2, Section 1.3, Section 1.7, Section 1.14, Section 1.15, Section**  
9 **1.18, and Section 1.28 are hereby amended to state:**

10 1.2 “Aggrieved Employees” means all current and former non-exempt Fairway employees who  
11 had one or more of the alleged violations committed against them, and worked in California from  
12 January 17, 2018 to January 14, 2022, regardless of whether they entered into settlement agreements  
13 with Fairway. It is estimated that there are approximately 1,000 Aggrieved Employees.  
14

15 1.3 The “Class” is defined as all current and former non-exempt Fairway employees who were  
16 employed by Fairway in California between October 23, 2014 through January 14, 2022 who have  
17 not previously entered into settlement agreements with Fairway in which they released their claims,  
18 or who continued employment with Fairway after signing a settlement agreement with Fairway but  
19 only for the time period they remained employed after the effective date of the settlement agreement.  
20 It is estimated that there are approximately 1,500 Class Members (as defined in this Agreement).  
21

22 1.7 “Class Period” or “Relevant Period” means October 23, 2014 through January 14, 2022.  
23

24 1.14 “Gross Settlement Amount” means the aggregate settlement amount of Three Million Seven  
25 Hundred Thirty-Eight Thousand Seven Hundred Dollars and Zero Cents (\$3,738,700.00) that  
26 Fairway may be required to pay, inclusive of (a) the Individual Settlement Payments (as defined in  
27 this Agreement) to be paid to Settlement Class Members and/or Aggrieved Employees (as defined  
28 in this Agreement); (b) Class Counsel’s Fee Award, which shall not exceed thirty-five percent (35%)

1 of the Gross Settlement Amount, as well as reasonable costs subject to court approval and to be  
2 confirmed by Class Counsel; (c) the reasonable expenses of administering the class settlement  
3 process subject to court approval; (d) the amount to be paid to the California Labor and Workforce  
4 Development Agency (“LWDA”) pursuant to the Private Attorneys General Act of 2004 (PAGA),  
5 totaling Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,5000.00), representing  
6 seventy-five percent (75%) of the Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to  
7 PAGA penalties; and (e) the Class Representative’s Service Award (as defined in this Agreement),  
8 not to exceed Five Thousand Dollars and Zero Cents (\$5,000.000) to the named Plaintiff.

9  
10 1.15 “Individual Settlement Payments” means the settlement amount that Fairway will pay each  
11 Settlement Class Member and/or Aggrieved Employee (as defined in this Agreement) in exchange  
12 for a release of the Released Claims and/or Released PAGA Claims.

13  
14 1.18 “PAGA Period” means January 17, 2017 through January 14, 2022.

15  
16 1.28 “Released PAGA Claims” means all claims exhausted in Plaintiff’s notice(s) sent to the  
17 LWDA and alleged in the operative complaint, which arose during the PAGA Period.

18  
19 **ARTICLE 3, Section 3.1, Section 3.2, Section 3.3, and Section 3.4 are hereby amended to**  
20 **state:**

21 3.1. Gross Settlement Amount. Subject to preliminary approval by the Court, and in  
22 consideration for the release of claims described in this Agreement, the Parties agree to settle the  
23 Actions pursuant to the financial terms set forth below. Fairway agrees to pay no more than the  
24 Gross Settlement Amount of Three Million Seven Hundred Thirty-Eight Thousand Seven Hundred  
25 Dollars and Zero Cents (\$3,738,700.00) that Fairway may be required to pay, inclusive of (a) the  
26 Individual Settlement Payments (as defined in this Agreement) to be paid to Settlement Class  
27 Members and/or Aggrieved Employees (as defined in this Agreement); (b) Class Counsel’s Fee  
28 Award, which shall not exceed thirty-five percent (35%) of the Gross Settlement Amount, as well

1 as reasonable costs subject to court approval and to be confirmed by Class Counsel; (c) the  
2 reasonable expenses of administering the class settlement process subject to court approval; (d) the  
3 amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) pursuant  
4 to the Private Attorneys General Act of 2004 (PAGA), totaling Thirty-Seven Thousand Five  
5 Hundred Dollars and Zero Cents (\$37,5000.00), representing seventy-five percent (75%) of the Fifty  
6 Thousand Dollars and Zero Cents (\$50,000.00) allocated to PAGA penalties; and (e) the Class  
7 Representative’s Service Award (as defined in this Agreement), not to exceed Five Thousand Dollars  
8 and Zero Cents (\$5,000.000) to the named Plaintiff.

9       Subject to the provisions and representations set forth herein, the Gross Settlement Amount  
10 is the maximum amount to be paid by Fairway, and under no circumstances shall Fairway be  
11 obligated to pay any additional amounts to Plaintiff, Class Counsel, or the Class Members under this  
12 Agreement. The Gross Settlement Amount will be distributed in accordance with the terms of this  
13 Agreement.

14  
15 3.2 Calculation and Distribution of Individual Settlement Payments. In consideration of the  
16 Settlement of the Released Claims of the Class Members against the Released Parties and Released  
17 PAGA Claims against the Aggrieved Employees and the LWDA, each Settlement Class Member  
18 will be mailed an Individual Settlement Payment as follows:

19       (a) each Class Member shall be allocated a pro rata amount of the Net Settlement  
20 Amount, less the \$12,500 portion of the Total PAGA Payment allocated to Aggrieved  
21 Employees, based on the number of workweeks they worked as a non-exempt Fairway  
22 employee in California during the Relevant Period.

23       (b) each Aggrieved Employee shall be allocated a pro rata amount of the \$12,500 portion  
24 of the Total PAGA Payment allocated to Aggrieved Employees based on the number of  
25 workweeks they worked as a non-exempt Fairway employee in California during the PAGA  
26 Period.

27       (c) Individual Settlement Payments will be distributed and paid only to Settlement Class  
28 Members after the Effective Date, pursuant to the terms of this Agreement.

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3.3 Attorneys' Fees, Costs and Expenses. In consideration for the work performed by Class Counsel in the Actions and all of the work to be performed by Class Counsel in securing Court approval of the Settlement, and ensuring that the Settlement is fairly administered and implemented, the Parties agree that Class Counsel may file an application with the Court contemporaneous with the Final Approval Motion for attorneys' fees in the estimated amount of up to One Million Three Hundred Eight Thousand Five Hundred Forty-Five Dollars and Zero Cents (\$1,308,545.00), but in no event to exceed thirty-five percent (35%) of the Gross Settlement Amount, and reasonable costs to be supported by competent evidence and subject to court approval, to which Fairway will not object. The Fee Award shall be paid from the Gross Settlement Amount. Should the Court approve a lesser fee percentage, amount of fees, and/or costs, the unapproved amounts shall be part of the Net Settlement Amount.

(a) Limitation on Attorney's Fees and Costs. Except as provided in this Agreement, Fairway will not be required to pay any other expense, costs, damages, or fees incurred by Plaintiff, any Class Member, or by any of their attorneys, experts, advisors, agents, or representatives arising from or related to the Actions. Any award of attorney's fees, costs, expenses, and damages payable hereunder to Class Counsel shall be in complete satisfaction of any and all claims for such attorneys' fees, costs, expenses, and damages under state or federal law, which Plaintiff, the Class, Class Counsel, or any other counsel have or may have against Fairway arising out of or in connection with the Actions and the Settlement, including, but not limited to, any claims for attorneys' fees, costs, and expenses incurred through and after the final disposition and termination of the Actions. Fairway will not be responsible for apportioning any Fee Award among Class Counsel and/or any other attorneys or law firms.

(b) No impact on Settlement. The substance of Class Counsel's application for attorneys' fees and costs is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the Settlement. The outcome of any proceeding related to the Fee Award shall not terminate this Agreement or otherwise affect the Court's ruling on the Final Approval Motion.

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3.4 Costs of Settlement Administration. The Parties have jointly selected a Settlement Administrator to administer the Settlement after receiving an acceptable estimate for such services as agreed by the Parties. The costs of settlement administration, currently estimated at Nineteen Thousand Two Hundred Fifty Dollars and Zero Cents (\$19,250.00), will be paid from the Gross Settlement Amount. The Settlement Administrator will agree to perform all necessary settlement administration duties described in Section 4 below.

3.6 Penalties Under the PAGA. The total PAGA payment shall be \$50,000, of which 75% of that total, in the amount of \$37,500, shall be paid to the LWDA. The remaining \$12,500 shall be distributed to the Aggrieved Employees on a pro rata basis based on the number of workweeks they worked as a non-exempt Fairway employee during the PAGA Period. This total PAGA Payment takes into consideration Fairway’s prior payment to the LWDA of \$18,000 made on October 23, 2020.


**ARTICLE 12 is hereby deleted.**

**EXECUTION BY PARTIES AND COUNSEL**

The Parties and their counsel hereby execute this Agreement.

Dated: 11/4/2022 | 2:48 PM PDT

SUSANA VALDEZ

By:   
Plaintiff

1 Dated: 11/8/2022

FAIRWAY INDEPENDENT MORTGAGE CORPORATION

By: Taylor Swartz  
(Signature)

Taylor Swartz

(Printed Name)

SVP Legal

(Title)

8 Dated: 11/10/2022

AEGIS LAW FIRM, PC

By: [Signature]

Kashif Haque  
Fawn F. Bekam

Attorneys for Plaintiff Susana Valdez

15 Dated: 11/8/22

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: [Signature]  
Christopher W. Decker

Attorneys for Defendant Fairway Independent Mortgage Corporation

28

**Certificate Of Completion**

Envelope Id: 05C6BDB7297342219B4770B4106E4FCB	Status: Completed
Subject: Complete with DocuSign: Amendment to Settlement Agreement.pdf	
Source Envelope:	
Document Pages: 7	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Taylor Swartz
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	4750 S. Biltmore Ln.
	Madison, WI 53718
	taylor.swartz@fairwaymc.com
	IP Address: 209.163.181.85

**Record Tracking**

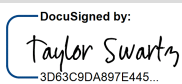
Status: Original	Holder: Taylor Swartz	Location: DocuSign
11/8/2022 10:48:45 AM	taylor.swartz@fairwaymc.com	

**Signer Events**

Taylor Swartz  
taylor.swartz@fairwaymc.com  
SVP Legal

Fairway Independent Mortgage Corp-Legal  
Security Level: Email, Account Authentication (None)

**Signature**

DocuSigned by:  
  
3D63C9DA897E445...

Signature Adoption: Pre-selected Style  
Using IP Address: 209.163.181.85

**Timestamp**

Sent: 11/8/2022 10:50:10 AM  
Viewed: 11/8/2022 10:50:17 AM  
Signed: 11/8/2022 10:50:26 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
<b>Editor Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Agent Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Intermediary Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	11/8/2022 10:50:10 AM
Certified Delivered	Security Checked	11/8/2022 10:50:17 AM
Signing Complete	Security Checked	11/8/2022 10:50:26 AM
Completed	Security Checked	11/8/2022 10:50:26 AM
<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>