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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, *et al.*,

Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

RESIDENTIAL CAPITAL, LLC, *et al.*,

Plaintiffs,

v.

Adv. Pro. No. 12-01671 (MG)

ALLSTATE INS. CO. *et al.*,

Defendants.

ANSWER

The Western and Southern Life Insurance Company, Western-Southern Life Assurance Company, Columbus Life Insurance Company, Integrity Life Insurance Company, National Integrity Life Insurance Company, and Fort Washington Investment Advisors, Inc. (collectively, “Western & Southern” and “Adversary Defendants”), plaintiffs in *The Western and Southern*



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Life Ins. Co., et al. v. Residential Funding Co., LLC, et al., pending in the Court of Common Pleas, Hamilton County, Ohio, Case No. A1105042 (the “Western & Southern Action”), each a defendant in the above-captioned adversary proceeding (the “Adversary Proceeding”), hereby answer the complaint (the “Adversary Complaint”) [Dkt. #1] filed by the above-captioned debtors and debtors-in-possession (the “Debtors”) as plaintiffs in the Adversary Proceeding, and respectfully state as follows:

SUMMARY OF ACTION

1. Based solely upon the allegations set forth in the Adversary Complaint and the other pleadings the Debtors have filed in the Adversary Proceeding, the Adversary Defendants admit that the Debtors sought declaratory or injunctive as described in the allegations set forth in paragraph 1.¹ To the extent that the allegations set forth in paragraph 1 can be construed as alleging that the Debtors are entitled to the relief sought or that such relief is warranted or justified, the Adversary Defendants deny such allegations.

2. The Adversary Defendants admit only that certain Debtors and certain Non-Debtor Affiliates² have been named as defendants in the Western & Southern Action and that the currently operative complaint in the Western & Southern Action asserts, among other claims and causes of action, claims related to statements made in the offering documents associated with certain securitizations of residential mortgage-backed securities (“RMBS”). The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 2.

¹ An Order granting certain relief sought by the Debtors in this Adversary Proceeding as against the Adversary Defendants expired on March 31, 2013 and the Debtors did not seek an extension of such order. Accordingly, the Adversary Defendants believe the Debtors no longer seek the relief originally sought in the Adversary Complaint, but submit this Answer out of an abundance of caution.

² Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Adversary Complaint.

3. The Adversary Defendants admit only that certain of the Non-Debtor Affiliates are named as defendants in the Western & Southern Complaint. The Adversary Defendants deny the remaining allegations set forth in paragraph 3 with respect to the Western & Southern Action. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 with respect to any action or proceeding other than the Western & Southern Action.

4. The Adversary Defendants admit only that the automatic stay under section 362(a) of the Bankruptcy Code stays the Western & Southern Action solely as against the Debtors absent relief from the stay. To the extent that the remainder of the allegations set forth in paragraph 4 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

5. To the extent that the allegations set forth in paragraph 5 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action, refer to the Western & Southern Complaint for a full description of the claims asserted therein against the Non-Debtor Affiliates, and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

6. To the extent that the allegations set forth in paragraph 6 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or

information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

7. To the extent that the allegations set forth in paragraph 7 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

JURISDICTION AND VENUE

8. To the extent that the allegations set forth in paragraph 8 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action. Pursuant to Bankruptcy Rule 7012(b), the Adversary Defendants state that they do not consent to the entry of final judgment by the Bankruptcy Court as to non-core matters.

9. To the extent that the allegations set forth in paragraph 9 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

10. The Adversary Defendants admit that, in the Adversary Complaint, the Debtors sought relief under sections 362(a)(1) and (3) and 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the

“Bankruptcy Rules”). To the extent that the allegations set forth in paragraph 10 can be construed as alleging that the Debtors are entitled to the relief sought, or that any provision of the Bankruptcy Code or Bankruptcy Rules warrants or justifies such relief, and to the extent that such allegations are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

PARTIES

11. The Adversary Defendants admit the allegation set forth in paragraph 11.

12. The Adversary Defendants admit only that they are the plaintiffs in the Western & Southern Action, that they are listed on Exhibit A to the Adversary Complaint, and that the Western & Southern Action is listed on Exhibit B to the Adversary Complaint. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 with respect to any action or proceeding other than the Western & Southern Action.

BACKGROUND AND FACTS

13. Based solely upon a review of the docket in the Debtors’ chapter 11 bankruptcy cases (the “Bankruptcy Cases”), the Adversary Defendants deny that an examiner has not been appointed in the Bankruptcy Cases and admit the remaining allegations set forth in paragraph 13.

14. Based solely upon a review of the docket in the Bankruptcy Cases, the Adversary Defendants admit the allegations set forth in paragraph 14.

15. The Adversary Defendants admit that the Debtors are indirectly owned by Ally Financial Inc., which is not a Debtor, and that the Whitlinger Affidavit in Support of Chapter 11

Petitions and First Day Pleadings, In re Residential Capital, LLC, Case No. 12-12020-MG (Bankr. S.D.N.Y. May 14, 2012), ECF No. 6 (the “Whitlinger Affidavit”), contains a description of the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of the Bankruptcy Cases. To the extent that the allegations in paragraph 15 can be construed to relate to the accuracy of the information contained in the Whitlinger Affidavit, and with respect to any other allegations set forth in paragraph 15, the Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of such allegations.

16. The Adversary Defendants admit only that the automatic stay under section 362(a) of the Bankruptcy Code stays the Western & Southern Action as against the Debtors absent relief from the stay, that certain of the Non-Debtor Affiliates are currently named as defendants in the Western & Southern Complaint, and that the Adversary Defendants intend to pursue their claims against such Non-Debtor Affiliates. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 16.

17. The Adversary Defendants admit only that with respect to the Western & Southern Action, the Adversary Defendants seek damages for alleged violations of the Ohio Securities Act and civil conspiracy, common-law fraud, and negligent misrepresentation in connection with purchases of residential mortgage-backed securities (“RMBS”), and refer to the Western & Southern Complaint for an accurate description of the claims set forth therein. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 17.

Rep & Warranty Cases

18. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18.

19. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19.

20. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20.

21. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21.

22. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22.

23. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23.

PLS Investor Cases

24. The Adversary Defendants admit only that certain Non-Debtor Affiliates are named as defendants in the Western & Southern Complaint. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 24.

25. The Adversary Defendants deny the allegations set forth in paragraph 25 with respect to the Western & Southern Action, refer to the Western & Southern Complaint for an accurate description of the allegations and claims set forth therein, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 25 with respect to any action or proceeding other than the Western & Southern Action.

26. The Adversary Defendants deny the allegations set forth in paragraph 26 with respect to the Western & Southern Action and refer to the Western & Southern Complaint for an accurate description of the allegations and claims set forth therein. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 with respect to any action or proceeding other than the Western & Southern Action.

27. The Adversary Defendants deny the allegations set forth in paragraph 27 with respect to the Western & Southern Action and refer to the Western & Southern Complaint for an accurate description of the allegations and claims set forth therein. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 with respect to any action or proceeding other than the Western & Southern Action.

28. The Adversary Defendants deny the allegations set forth in paragraph 28 with respect to the Western & Southern Action and refer to the Western & Southern Complaint for an accurate description of the allegations and claims set forth therein. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 with respect to any action or proceeding other than the Western & Southern Action.

29. The Adversary Defendants deny the allegations set forth in paragraph 29 with respect to the Western & Southern Action. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29 with respect to any action or proceeding other than the Western & Southern Action.

FHFA Case

30. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30.

31. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31.

32. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32.

33. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33.

34. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34.

CONTINUATION OF THE MBS ACTIONS AGAINST NON-DEBTOR AFFILIATES

35. The Adversary Defendants deny the allegations set forth in paragraph 35 with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations as to any action or proceeding other than the Western & Southern Action.

36. To the extent that the allegations set forth in paragraph 36 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

37. To the extent that the allegations set forth in paragraph 37 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such

allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

38. To the extent that the allegations set forth in paragraph 38 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

39. To the extent that the allegations set forth in paragraph 39 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action, are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action, and refer to the provisions of the insurance policies described in paragraph 39 for their true terms and conditions.

NATURE OF RELIEF REQUESTED

40. The Adversary Defendants admit that by the Adversary Complaint, the Debtors sought the relief described in paragraph 40. To the extent that the allegations set forth in paragraph 40 can be construed as alleging that the Debtors are entitled to the relief sought, or that any provision of the Bankruptcy Code or Bankruptcy Rules warrants or justifies such relief, the Adversary Defendants deny such allegations.

FIRST CLAIM FOR RELIEF **(Section 362 Declaratory Judgment)**

41. The Adversary Defendants repeat their responses to the allegations set forth in paragraphs 1 through 40 as if fully set forth herein.

42. The Adversary Defendants admit that the Debtors sought the relief described in paragraph 42. To the extent that the allegations set forth in paragraph 42 can be construed as alleging that the Debtors are entitled to the relief sought, or that any provision of the Bankruptcy Code or Bankruptcy Rules warrants or justifies such relief, the Adversary Defendants deny such allegations.

43. To the extent that the allegations set forth in paragraph 43 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

44. To the extent that the allegations set forth in paragraph 44 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

45. To the extent that the allegations set forth in paragraph 45 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

46. To the extent that the allegations set forth in paragraph 46 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or

information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

47. The Adversary Defendants deny the allegations set forth in paragraph 47 with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

48. The Adversary Defendants admit that the Debtors sought a declaratory judgment extending the automatic stay under sections 362(a)(1) and (3) of the Bankruptcy Code to the continued prosecution of the MBS Actions, including the Western & Southern Action, against the Non-Debtor Affiliates. To the extent that the allegations set forth in paragraph 48 can be construed as alleging that the Debtors are entitled to the relief sought, or that any provision of the Bankruptcy Code or Bankruptcy Rules warrants or justifies such relief, the Adversary Defendants deny such allegations.

SECOND CLAIM FOR RELIEF
(Section 105 Injunctive Relief)

49. The Adversary Defendants repeat their responses to the allegations set forth in paragraphs 1 through 48 as if fully set forth herein.

50. The Adversary Defendants admit that the Debtors sought an injunction enjoining the continued prosecution of the MBS Actions, including the Western & Southern Action, against the Non-Debtor Affiliates under section 105(a) of the Bankruptcy Code until the effective date of a restructuring plan or further order of the Court. To the extent that the allegations set forth in paragraph 50 can be construed as alleging that the Debtors are entitled to the relief sought, or that any provision of the Bankruptcy Code or Bankruptcy Rules warrants or justifies such relief, the Adversary Defendants deny such allegations.

51. The Adversary Defendants admit the allegations set forth in paragraph 51.

52. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52, except they deny that any such relief is appropriate as requested in the Adversary Proceeding.

53. To the extent that the allegations set forth in paragraph 53 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

54. To the extent that the allegations set forth in paragraph 54 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action, refer to section 105 and the “applicable case law” for the terms thereof, and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

55. The Adversary Defendants deny the allegations set forth in paragraph 55 with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

56. To the extent that the allegations set forth in paragraph 56 are not legal argument or legal conclusions, which do not require a response, the Adversary Defendants deny such allegations with respect to the Western & Southern Action and are without knowledge or

information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

57. The Adversary Defendants deny the allegations set forth in paragraph 57 with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

58. The Adversary Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 58.

59. The Adversary Defendants deny the allegations set forth in paragraph 59 with respect to the Western & Southern Action and are without knowledge or information sufficient to form a belief as to the truth of such allegations with respect to any action or proceeding other than the Western & Southern Action.

60. The Adversary Defendants admit that the Debtors sought the relief described in paragraph 60. To the extent that the allegations set forth in paragraph 60 can be construed as alleging that the Debtors are entitled to the relief sought, or that any provision of the Bankruptcy Code or Bankruptcy Rules warrants or justifies such relief, the Adversary Defendants deny such allegations.

FIRST AFFIRMATIVE DEFENSE

The Court is without subject matter jurisdiction over this matter, and the Adversary Defendants reserve their rights to move to withdraw the reference as to the Adversary Proceeding and related proceedings pursuant to 28 U.S.C. § 157(d).

SECOND AFFIRMATIVE DEFENSE

The Adversary Complaint fails to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

Sections 362(a)(1) and (3) of the Bankruptcy Code do not provide for a stay of prosecution of the Western & Southern Action against any party other than the Debtors.

FOURTH AFFIRMATIVE DEFENSE

The Debtors fail to plead adequately or satisfy the requirements for a declaratory judgment extending the automatic stay to the continued prosecution of the Western & Southern Action against the Non-Debtor Affiliates.

FIFTH AFFIRMATIVE DEFENSE

The Debtors fail to plead adequately or satisfy the requirements for the extraordinary remedy of injunctive relief in favor of the Non-Debtor Affiliates.

SIXTH AFFIRMATIVE DEFENSE

The Adversary Complaint fails to establish that the Debtors will be irreparably harmed if the Western & Southern Action continues against the Non-Debtor Affiliates.

SEVENTH AFFIRMATIVE DEFENSE

The indemnification obligations, if any, of the Debtors are insufficient to justify or warrant the extraordinary remedy of injunctive relief in favor of the Non-Debtor Affiliates.

EIGHTH AFFIRMATIVE DEFENSE

The risk of collateral estoppel, *stare decisis*, issue preclusion, and/or adverse evidentiary findings does not compel the Debtors to participate in the Western & Southern Action.

NINTH AFFIRMATIVE DEFENSE

To the extent that the Debtors assert that any insurance policies potentially providing coverage for the claims asserted by the Adversary Defendants in the Western & Southern Action, and/or the proceeds thereof, are property of the Debtors' estate and thus implicate section 362(a) of the Bankruptcy Code, the Adversary Defendants assert that such policies and proceeds are not

property of the estate and that there has been no finding by this or any other court that such policies and proceeds are property of the estate.

TENTH AFFIRMATIVE DEFENSE

Enjoining the continuation of the Western & Southern Action as against the Non-Debtor Affiliates is contrary to the public interest.

ELEVENTH AFFIRMATIVE DEFENSE

The Debtors have waived the right to seek the relief sought in the Adversary Complaint.

TWELFTH AFFIRMATIVE DEFENSE

The Debtors are estopped from seeking the relief sought in the Adversary Complaint under the doctrine of laches and equitable estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

The Adversary Defendants are without knowledge or information sufficient to form a belief as to whether they may have additional, as-yet unstated, defenses available, and reserve the right to assert additional defenses that may arise during the course of the Adversary Proceeding.

WHEREFORE, based upon the foregoing, the Adversary Defendants respectfully request that this Court enter judgment:

1. denying the Debtors' request for a declaratory judgment extending the automatic stay under section 362 of the Bankruptcy Code to the continued prosecution of the Western & Southern Action against non-Debtors;
2. denying injunctive relief;
3. dismissing the Adversary Complaint with prejudice; and
4. granting such other and further relief as the Court deems just and proper.

Dated: April 30, 2013
New York, New York

Respectfully submitted,

/s/ Steven S. Fitzgerald

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