

Hearing Date and Time: December 17, 2013 at 10:00 a.m. (Eastern)
Objection Deadline: December 10, 2013 at 4:00 p.m. (Eastern)

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

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In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
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MARION L. JENKINS and SHARON)	
JENKINS,)	
)	
Plaintiffs,)	Adv. Proc. 12-01935 (MG)
)	
v.)	
)	
RESIDENTIAL FUNDING)	
COMPANY, LLC, et. al.,)	
)	
Defendants;)	
-----)	

**RESIDENTIAL FUNDING COMPANY'S JOINDER TO
MOTION OF WELLS FARGO BANK, N.A. AND U.S. BANK, NATIONAL
ASSOCIATION, AS TRUSTEE'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT**



Defendant Residential Funding Company, LLC (“**RFC**”), a debtor and debtor in possession in the above-captioned chapter 11 cases (collectively with all affiliated debtors and debtors in possession, the “**Debtors**”), submits this joinder (the “**Joinder**”) to the Motion of Wells Fargo Bank, N.A. and U.S. Bank, National Association, as Trustee’s to Dismiss Plaintiffs’ Complaint [Docket No. 44] (the “**Wells MTD**”), which seeks entry of an order dismissing the “Amended” Complaint (the “**Amended Complaint**”) filed by Marion L. Jenkins and Sharon Jenkins, Plaintiffs in the above-captioned adversary proceeding (the “**Adversary Proceeding**”). In support hereof, the Debtors respectfully state as follows:

BACKGROUND

A. General Background

1. On May 14, 2012 (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. These cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

2. On May 16, 2012, the United States Trustee for the Southern District of New York appointed a nine member Official Committee of Unsecured Creditors.

B. Background Relevant to the Adversary Proceeding

3. On November 9, 2012, the Plaintiffs initiated the Adversary Proceeding by filing a complaint (“**Complaint**”). The Adversary Proceeding inadvertently appeared on the docket in the chapter 11 case of RFC, Case No. 12-12019, rather than the docket of the Debtors’ jointly administered chapter 11 cases, Case No. 12-12020.

4. On December 13, 2012, the Debtors requested by letter to the Court an extension of the deadline by which RFC and the other Defendants were required to respond to

the Complaint, citing as a basis lack of service and the Complaint's failure to appear on the docket of the Debtors' jointly administered chapter 11 cases. Subsequently, the Debtors obtained consent to such extension from the Plaintiffs, and on December 14, 2012, the Court so-ordered the consensual extension of the Defendants' deadline to respond.

5. On December 31, 2012, Mr. Jenkins filed a petition for relief under chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Case No. 12-82018. On January 14, 2012, the Plaintiffs also filed in Mr. Jenkins' chapter 13 case an adversary complaint substantially similar to the Complaint. The resulting adversary proceeding was assigned Case Number 13-05015. Mr. Jenkins' chapter 13 bankruptcy cases and the associated adversary proceeding were subsequently dismissed.

6. On January 22, 2013, the Debtors filed their *Motion Pursuant to Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12(e) for a More Definite Statement* [Docket No. 10] (the "**Rule 12(e) Motion**"). The Court held a hearing on the Rule 12(e) Motion on March 21, 2013 and, on March 28, 2013, the Court entered an order granting the Rule 12(e) Motion. In its order, the Court directed the Plaintiffs to file an amended complaint on or before May 20, 2013.

7. On May 20, 2013, the Plaintiffs filed the Amended Complaint, which was identical to the original complaint filed in the Adversary Proceeding. Subsequently, the Court granted a motion to dismiss the Amended Complaint as against Defendants Judy Faber and Mortgage Electronic Registration Systems, Inc. [Docket No. 40].

8. On November 12, 2013, Defendants Wells Fargo Bank, N.A. and U.S. Bank National Association, as Trustee filed the Wells MTD.

JOINDER

9. RFC hereby joins Sections I, III, and IV of the Wells MTD. For the reasons stated in the Wells MTD, the Amended Complaint should also be dismissed with

prejudice as to RFC because the Plaintiffs have failed to comply with the Court's order granting the Rule 12(e) Motion, have failed to properly serve RFC with the Complaint or the Amended Complaint, and have failed to state a claim against RFC upon which relief may be granted.

WHEREFORE, RFC respectfully requests that the Court enter an Order dismissing with prejudice the Amended Complaint and this Adversary Proceeding.

New York, New York
Dated: December 4, 2013

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