

**Hearing Date and Time: March 12, 2015 at 10:00 a.m. (prevailing Eastern Time)**  
**Objection Deadline: February 20, 2015 at 4:00 p.m. (prevailing Eastern Time)**

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

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

RESIDENTIAL CAPITAL, LLC, et al.,

Plaintiffs,

v.

ALLSTATE INS. CO., et al.,

Defendants.

) Case No. 12-12020 (MG)

) Chapter 11

) Jointly Administered

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

**NOTICE OF MOTION OF THE RESCAP LIQUIDATING TRUST  
TO VOLUNTARILY DISMISS ADVERSARY PROCEEDING**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On February 10, 2015, the ResCap Liquidating Trust filed its *Motion to Voluntarily Dismiss Adversary Proceeding* (the "**Motion**").

2. A hearing (the "**Hearing**") to consider the Motion shall be held before the Honorable Martin Glenn, United States Bankruptcy Judge, in Room 501 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York, 10004-1408, on **March 12, 2015 at 10:00 a.m.** (prevailing Eastern Time).



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3. Any objection to the Motion must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules of the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic filing system, and be served, so as to be received no later than **February 20, 2015 at 4:00 p.m.** (prevailing Eastern Time) upon (a) Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408; (b) co-counsel to the ResCap Liquidating Trust, Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attention: Kenneth H. Eckstein, Douglas H. Mannal, Joseph A. Shifer); (c) co-counsel to the ResCap Liquidating Trust, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attention: Gary S. Lee, Norman S. Rosenbaum, Jordan A. Wishnew and Meryl L. Rothchild) (d) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014 (Attention: Linda Riffkin and Brian S. Masumoto); and (e) The ResCap Liquidating Trust, Quest Turnaround Advisors, 800 Westchester Ave., Suite S-520, Rye Brook, NY 10573 (Attention: Jeffrey Brodsky).

4. If no objections to the Motion are timely filed and served to the relief requested in the Motion, the Bankruptcy Court may deem any opposition waived, treat the Motion as conceded, and enter an order granting the relief requested in the Motion without further notice or hearing.

5. A copy of the Motion can be obtained or viewed for a fee via PACER at [www.pacer.gov](http://www.pacer.gov) or (without charge) on the Debtors' restructuring website at [www.kcellc.net/rescap](http://www.kcellc.net/rescap).

Dated: New York, New York  
February 10, 2015

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ Joseph A. Shifer  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

RESIDENTIAL CAPITAL, LLC, et al.,

Plaintiffs,

v.

ALLSTATE INS. CO., et al.,

Defendants.

)  
) Case No. 12-12020 (MG)

)  
) Chapter 11

)  
) Jointly Administered

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

**MOTION OF THE RESCAP LIQUIDATING TRUST TO  
VOLUNTARILY DISMISS ADVERSARY PROCEEDING**

TO THE HONORABLE MARTIN GLENN,  
UNITED STATES BANKRUPTCY JUDGE:

The ResCap Liquidating Trust (the “**Liquidating Trust**”), successor in interest to the debtors (the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) and plaintiffs in this adversary proceeding (the “**Adversary Proceeding**”), hereby files this motion (the “**Motion**”) for entry of an order pursuant to Rule 7041(a)(2)

of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) dismissing the Adversary Proceeding with prejudice, substantially in the form annexed hereto as **Exhibit 1** (the “**Proposed Order**”). In support of this Motion, the Liquidating Trust respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Article XII of the Plan. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Rule 7041(a)(2) of the Bankruptcy Rules.

### **BACKGROUND**

4. On May 14, 2012 (the “**Petition Date**”), the Debtors commenced the Chapter 11 Cases under title 11 of the Bankruptcy Code. The Debtors’ cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

5. On May 25, 2012, the Debtors commenced the Adversary Proceeding, seeking to extend the automatic stay and enjoin the continuation of pre-petition litigation against the Debtors’ former directors and officers (the “**D&Os**”), as well as the Debtors’ non-debtor affiliates Ally Financial Inc., Ally Bank, GMAC Mortgage Group, LLC, and Ally Securities LLC (collectively, with the D&Os, the “**Non-Debtor Affiliates**”), related to the Debtors’ issuance or sale of mortgage-backed securities.

6. On December 11, 2013, the Court entered an order [Docket No. 6065] (the “**Confirmation Order**”) confirming the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al., and the Official Committee of Unsecured Creditors* [Docket No. 6065-1] (the “**Plan**”).<sup>1</sup>

7. The Plan provides for the creation of the Liquidating Trust as successor in interest to the Debtors, and on the Effective Date, the Liquidating Trust was deemed to be substituted as a party to any litigation in which the Debtors are parties, including pending adversary proceedings. *See* Plan Art. VI; *see also* Confirmation Order ¶ 34.

8. On December 17, 2013 (the “**Effective Date**”), the effective date under the Plan occurred, the Plan was substantially consummated, and the Debtors emerged from chapter 11. *See Notice of Entry of Confirmation Order Confirming the Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al., and the Official Committee of Unsecured Creditors and Occurrence of Effective Date* [Docket No. 6137].

9. Pursuant to the global settlement that was reached in the Chapter 11 Cases, the Plan includes a broad release for certain non-Debtor parties (the “**Third Party Release**”), including the Non-Debtor Affiliates, with respect to claims related to the Debtors’ prepetition business, and enjoins any action against the Non-Debtor Affiliates for such claims. *See* Plan Art. IX.D, Art. IX.I; *see also* Confirmation Order ¶ 40.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

**RELIEF REQUESTED**

10. Because the effectiveness of the Plan and the Third Party Release have rendered the Adversary Proceeding moot, the Liquidating Trust seeks entry of the Proposed Order dismissing the Adversary Proceeding with prejudice.

**BASIS FOR RELIEF**

11. Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure (made applicable here by Bankruptcy Rule 7041), adversary proceedings may be voluntarily dismissed by a plaintiff without a court order (i) if the opposing party has not served an answer or motion for summary judgment, or (ii) by a stipulation signed by all parties who have appeared. F. R. Civ. P. Rule 41(a)(1). Alternatively, Rule 41(a)(2) provides for dismissal of an action by court order “on terms that the court considers proper.” F. R. Civ. P. Rule 41(a)(2). Given that certain of the defendants filed answers, the Liquidating Trust would need to enter into a stipulation with each of the defendants to dismiss the Adversary Proceeding under Rule 41(a)(1). However, there are forty-two defendants that are party to the Adversary Proceeding (many of whom are represented by separate counsel), making entry into a stipulation impractical. Accordingly, the Liquidating Trust requests that the Court enter the Proposed Order closing the Adversary Proceeding pursuant to Rule 41(a)(2).

12. The requested relief is non-controversial, because, given the effectiveness of the Plan, no party will be prejudiced by dismissal of the Adversary Proceeding. “Rule 41(a)(2) motions for voluntary dismissal should be liberally granted, provided that no party will suffer legal prejudice.” *BlueEarth Biofuels, LLC v. Hawaiian Elec. Co.*, 2011 U.S. Dist. LEXIS 78040, at \*6 (D. Haw. July 18, 2011); *see also SEC v. American Bd. of Trade*, 750 F. Supp. 100, 105 (S.D.N.Y. 1990) (granting motion for

voluntary dismissal pursuant to Rule 41(a)(2)) (“A voluntary dismissal may, at the discretion of the trial court, be granted if prejudice will not result to the other party. . . . Because the dismissal will be with prejudice, there can be no adverse effect on defendants here.”).

13. Here, because there were no counterclaims filed in the Adversary Proceeding, dismissing the Adversary Proceeding with prejudice will not have any adverse effect on the defendants thereto. *See Hochhauser v. Weinreb*, 1992 U.S. Dist. LEXIS 8458, at \*4 (E.D.N.Y. June 5, 1992) (dismissal under Rule 41(a)(2) “is particularly appropriate where . . . the matter is still at an early stage, and no cross- or counter-claims have been interposed”); *see also Goodwin v. Reynolds*, 2012 U.S. Dist. LEXIS 140208, at \*24 (N.D. Ala. Sept. 28, 2012) (granting dismissal pursuant to Rule 41(a)(2) after defendants answered when there were no pending counterclaims). Further, the effectiveness of the Third Party Release has rendered the relief sought by the Debtors in the Adversary Proceeding moot.

14. Moreover, closing the Adversary Proceeding will benefit the estates by permitting certain of the Debtors to proceed with applications for a final decree closing their Chapter 11 Cases.<sup>2</sup> Closing those Chapter 11 Cases will result in a reduction of administrative expense associated with keeping the cases open, to the benefit of all beneficiaries of the Liquidating Trust.

### **NOTICE**

15. Pursuant to the *Notice, Case Management, and Administrative Procedures* approved by the Court in the Chapter 11 Cases (the “**Case Management**

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<sup>2</sup> Simultaneous herewith, the Liquidating Trust is filing a motion in the main Chapter 11 Case seeking the issuance of a final decree closing the chapter 11 cases of certain Debtors that are party to the Adversary Proceeding.

**Order**”) [Docket No. 141], notice of this Motion has been given to the parties identified on the Special Service List and General Service List (as such terms are defined in the Case Management Order), as well as all defendants in the Adversary Proceeding. The Liquidating Trust submits that no other or further notice of the Motion is necessary.

**CONCLUSION**

WHEREFORE, the Liquidating Trust requests the entry of the Proposed Order dismissing the Adversary Proceeding, with prejudice and without costs to any party, and such other and further relief as is just and proper.

Dated: New York, New York  
February 10, 2015

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ Joseph A. Shifer  
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**EXHIBIT 1**

**Proposed Order**

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

In re:	)	
	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	
	)	Chapter 11
Debtors.	)	Jointly Administered
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RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Adv. Case No. 12-01671 (MG)
ALLSTATE INS. CO., <u>et al.</u> ,	)	
	)	
Defendants.	)	
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**ORDER PURSUANT TO FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 7041 DISMISSING ADVERSARY PROCEEDING**

This Court having considered the motion (the “**Motion**”)<sup>1</sup> of the ResCap Liquidating Trust (the “**Liquidating Trust**”), successor in interest to the debtors (the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) and the plaintiffs in this adversary proceeding (the “**Adversary Proceeding**”), for entry of an order pursuant to Rule 7041(a)(2) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) dismissing the Adversary Proceeding with prejudice, as more fully set forth in the Motion; and the Court having subject matter jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

January 31, 2012 (Preska, C.J.); and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors, and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. Pursuant to F. R. Civ. P. Rule 41(a)(2), as incorporated into the Bankruptcy Rules by Bankruptcy Rule 7041, the Adversary Proceeding is hereby dismissed with prejudice and without costs to any party.
3. The Clerk of the Court is authorized to close the Adversary Proceeding.
4. This Court shall retain jurisdiction to the extent necessary to enforce this Order.

Dated: New York, New York  
\_\_\_\_\_, 2015

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE