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Bernard J. Kornberg (CSB. 252006)
Admitted *Pro Hac Vice*

Hearing Date and Time: March 22, 2016 at 10:00 a.m.
Deadline to Respond: February 24, 2016

Counsel for Ocwen Loan Servicing, LLC

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

In re:

Residential Capital, LLC, *et al.*,

Debtors.

Shelley von Brincken,

Plaintiff,

GMAC Mortgage, LLC *et al.*,

Defendants.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

Adv. Case. No. 13-01436 (MG)



REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

Defendant Ocwen Loan Servicing, LLC (“Ocwen”) hereby respectfully submits this reply to the opposition of plaintiff Shelley von Brincken (“Plaintiff”) to Ocwen’s motion to dismiss her first amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) as incorporated by Federal Rule of Bankruptcy Procedure 7012.

Plaintiff’s opposition argues that the motion to dismiss should fail as Plaintiff alleged facts that demonstrate that the foreclosure on her home was void. Opposition, pp.9-10. This argument does not address the two substantial predicate issues raised by the motion to dismiss.

The first argument in the motion to dismiss was that Plaintiff has alleged no facts as to Ocwen. The complaint does not even mention Ocwen, nonetheless allege facts showing that Plaintiff is entitled to relief from Ocwen. Motion to Dismiss, p.4. GMAC Mortgage, LLC (“GMAC”) was the acting servicer for all relevant events. Escrow Letter, RJN, Exhibit 1. Accordingly, even if the complaint properly alleged a void foreclosure sale, it would not entitle Plaintiff to relief from Ocwen.

The second argument in the motion to dismiss was that the complaint is barred by *res judicata*. In the motion to dismiss, Ocwen showed that Plaintiff’s claims were barred by two prior cases that directly challenged the foreclosure. Judgment was entered against Plaintiff on the merits on both those cases. Motion to Dismiss, p.5. In the Rescap Trust’s motion to dismiss, they raise a third separate case with the same *res judicata* effect. Rescap’s Motion to Dismiss, pp.11-14. Plaintiff’s opposition does not discuss these cases, nonetheless show why Plaintiff should be allowed to litigate the same claims for a fourth time.

As Plaintiff's reply does nothing to cure the defects in her complaint, her complaint fails to state a claim and should be dismissed with prejudice.

Dated this 14 day of March, 2016.

By: /s/ Bernard J. Kornberg
BERNARD J. KORNBERG (CSB. 252006)

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On March 14, 2016, I served true copies of the following document(s):

REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

on the interested parties in this action as follows:

**Shelley Von Brincken
P.O. Box 2362
Grass Valley, CA 95945**

**Normal Scott Rosenbaum
Morrison & Foerster LLP
Email: nrosenbaum@mofo.com**

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Severson & Werson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 14, 2016, at San Francisco, California.

/s/ Erica L. Wheelock Holloway
Erica L. Wheelock Holloway