

**Hearing Date and Time:**  
**November 17, 2016 at 11:00 a.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

**Objection Deadline Date and Time:**  
**November 10, 2016 at 4:00 p.m.**

In re:

RESIDENTIAL CAPITAL, LLC, et al.,  
  
Debtors.

Case No. 12-12020 (MG)

Chapter 11  
(Jointly Administered)

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Gwendolyn B. Hawthorne

Adv. No. 12-02050 (MG)

Plaintiff,

v.

**RELATED DOC. NO. 40**

GMAC Mortgage, LLC, U.S. Bank National  
Association, GMFS LLC, Judy Faber, Vice  
President, Brenda Guidry, and Mortgage  
Electronic Registration System Inc., and  
Duane Thompson, Assistant Secretary  
Mortgage Electronic Registration Systems Inc,  
as Nominee for GMFS, LLC, Residential  
Funding Corporation

Defendants.  
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**NOTICE OF MOTION OF DEFENDANTS MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM, INC., DUANE THOMPSON, JUDY FABER, AND U.S.  
BANK NATIONAL ASSOCIATION TO DISMISS PLAINTIFF'S COMPLAINT TO  
DETERMINE NATURE AND EXTENT OF LIENS PURSUANT TO 11 U.S.C. 506(A)  
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED,  
LACK OF PERSONAL JURISDICTION, AND INSUFFICIENT SERVICE OF  
PROCESS AND LIMITED JOINDER OF POINTS AND AUTHORITIES IN SUPPORT  
OF DISMISSAL FROM JOINT MOTION OF THE RESCAP LIQUIDATING TRUST  
AND THE RESCAP BORROWER CLAIMS TRUST FOR (I) DISMISSAL OF  
ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND  
FRCP 12(b)(6), AND (II) DISALLOWANCE OF  
PROOFS OF CLAIM NOS. 6273 AND 6274 FILED BY PLAINTIFF**

PLEASE TAKE NOTICE that, upon the annexed motion (the "Motion") requesting an  
order (the "Order") dismissing the above-captioned adversary case, defendants Mortgage



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Electronic Registration Systems, Inc. (“MERS”), Duane Thompson (“Thompson”), Judy Faber (“Faber”), and U.S. Bank National Association (“U.S. Bank” and collectively with MERS, Thompson and Faber, the “Moving Defendants”), will move this Court, before the Honorable Martin Glenn, United States Bankruptcy Judge, on **November 17, 2016 at 11:00 a.m.** (the “Hearing”), or as soon thereafter as counsel may be heard, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 523, New York, New York 10004, for an Order granting the relief stated above.

**PLEASE TAKE FURTHER NOTICE** that you do not need to appear at the Hearing if you do not object to the relief requested in the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Hearing may be continued or adjourned from time-to-time without further notice other than an announcement of the adjourned date(s) at the Hearing or at a later hearing.

**PLEASE TAKE FURTHER NOTICE** that objections to the Motion must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court; and (iii) be filed with the Bankruptcy Court electronically, in accordance with General Order No. 559 (General Order No. 559, Revised Electronic Filing Procedures Applicable to All Bankruptcy Cases and Adversary Proceedings can be found on the Court’s official website at [www.nyeb.uscourts.gov/main/admin\\_orders.php](http://www.nyeb.uscourts.gov/main/admin_orders.php)), by registered users of the Bankruptcy Court’s filing system and by other parties-in-interest, preferably in Portable Document Format (PDF), WordPerfect, or any other word processing format (with a hard copy delivered directly to the Chambers of Judge Glenn) and served upon (a) Troutman Sanders LLP, counsel for the Moving Defendants, 875 Third Avenue, New York, New York 10022 (Attention: Brett D. Goodman); and (b) Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street,

Room 1006, New York, New York 10004, so as to be received by **4:00 p.m. (EST) on November 10, 2016** (the “Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that unless objections are received by the Objection Deadline as set for herein, the relief may be granted as requested in the Motion.

Dated: New York, New York  
November 2, 2016

TROUTMAN SANDERS LLP

By: /s/ Brett D. Goodman

Brett D. Goodman  
875 Third Avenue  
New York, New York 10022  
Tel. No. (212) 704-6000  
Fax No. (212) 704-6288

-and-

Matthew R. Brooks (GA Bar No.378018)  
Bank of America Plaza  
600 Peachtree Street, Suite 5200  
Atlanta, Georgia 30308-2216  
Tel. No.: (404) 885-3000  
Fax No.: (404) 885-3900

*Counsel for Defendants Mortgage Electronic  
Registration System, Inc., Duane Thompson, Judy  
Faber, and U.S. Bank National Association*

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Association, GMFS LLC, Judy Faber, Vice  
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Mortgage Electronic Registration Systems Inc,  
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Funding Corporation

Defendants.  
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Case No. 12-12020 (MG)

Chapter 11  
(Jointly Administered)

Adv. No. 12-02050 (MG)

**RELATED DOC. NO. 40**

**MOTION OF DEFENDANTS MORTGAGE ELECTRONIC REGISTRATION SYSTEM,  
INC., DUANE THOMPSON, JUDY FABER, AND U.S. BANK NATIONAL  
ASSOCIATION TO DISMISS PLAINTIFF'S COMPLAINT TO DETERMINE NATURE  
AND EXTENT OF LIENS PURSUANT TO 11 U.S.C. 506(A) FOR FAILURE TO STATE  
A CLAIM UPON WHICH RELIEF CAN BE GRANTED, LACK OF PERSONAL  
JURISDICTION, AND INSUFFICIENT SERVICE OF PROCESS  
AND LIMITED JOINDER OF POINTS AND AUTHORITIES IN SUPPORT OF  
DISMISSAL FROM JOINT MOTION OF THE RESCAP LIQUIDATING TRUST AND  
THE RESCAP BORROWER CLAIMS TRUST FOR (I) DISMISSAL OF ADVERSARY  
PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(6),  
AND (II) DISALLOWANCE OF  
PROOFS OF CLAIM NOS. 6273 AND 6274 FILED BY PLAINTIFF**

Defendants Mortgage Electronic Registration Systems, Inc. ("MERS"), Duane Thompson  
("Thompson"), Judy Faber ("Faber"), and U.S. Bank National Association ("U.S. Bank" and

collectively with MERS, Thompson and Faber, the “Moving Defendants”), by and through the undersigned counsel, hereby submit this *Motion of Defendants Mortgage Electronic Registration System, Inc. Duane Thompson, Judy Faber, and U.S. Bank National Association to Dismiss Plaintiff’s Complaint to Determine Nature and Extent of Liens Pursuant to 11 U.S.C. 506(A) for Failure to State a Claim Upon Which Relief Can Be Granted, Lack of Personal Jurisdiction, and Insufficient Service of Process and Limited Joinder of Points and Authorities In Support of Dismissal from Joint Motion of ResCap Liquidating Trust and the ResCap Borrower Claims Trust for (I) Dismissal of Adversary Proceeding Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6), and (II) Disallowance of Proofs of Claims Nos. 6273 and 6274 Filed by Plaintiff* (the “Motion”). Pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(5), and 12(b)(6), as made applicable herein pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Moving Defendants seek the dismissal of all claims alleged against them in the Complaint to Determine Nature and Extent of Liens Pursuant to 11 U.S.C. 506(A) (the “Complaint”), filed by Plaintiff Gwendolyn B. Hawthorne (“Plaintiff”) on December 2, 2012.<sup>1</sup> In support of their Motion, the Moving Defendants respectfully show the Court as follows and also join and fully incorporate herein by reference the arguments, points and authorities made by the Rescap Liquidating Trust and the ResCap Borrower Claims Trust (the “ResCap Defendants”) in their *Joint Motion* to dismiss the Complaint [Dkt. No. 40], filed on September 30, 2016 (the “ResCap Motion to Dismiss”).<sup>2</sup>

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<sup>1</sup> The Moving Defendants accept the allegations contained in Plaintiff’s Complaint as true only for the purposes of their Motion. The Moving Defendants do not admit the truth or accuracy of the allegations and expressly reserve the right to deny and contest all allegations in the Complaint and to assert all appropriate affirmative defenses.

<sup>2</sup> Specifically, the Moving Defendants join and fully incorporate herein the arguments, points and authorities raised in Section E (i)-(iv) of the ResCap Defendants’ Joint Motion to dismiss the Complaint and any corresponding background and procedural information.

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a “core” proceeding pursuant to 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C §§ 1408 and 1409. The Moving Defendants are entitled to the relief requested herein pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure and Sections 105 and 502 of the Bankruptcy Code.

### **RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

2. As set forth in the ResCap Motion to Dismiss, on October 24, 2005, Plaintiff obtained a loan (the “Loan”) from GMFS, LLC in the amount of \$135,000.00, and evidenced by an Adjustable Rate Note (the “Note”). The Note is secured by real property and improvements located at 2377 Scott Oaks Trail, SW, Marietta, Georgia 30008 (the “Property”) pursuant to that certain Security Deed dated October 24, 2005 (the “Security Deed” and together with the Note, the “Security Documents”). The Security Deed is recorded in Deed Book 14245, Page 5868 of the records of the Clerk of Superior Court of Cobb County, Georgia.

3. GMFS, LLC’s interest in the Note and Security Deed was ultimately transferred to U.S. Bank, as trustee, pursuant to that certain Allonge to Note and Assignment of Security Deed.

4. Plaintiff defaulted on the Loan, and on December 4, 2012, filed for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia (the “Georgia Bankruptcy Court”) [Case No. 12-80158]. Plaintiff’s case was dismissed pursuant to an order entered by the Georgia Bankruptcy Court on October 4, 2012.<sup>3</sup>

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<sup>3</sup> Plaintiff also commenced an adversary proceeding against the above-captioned defendants on December 7, 2012, in the Georgia Bankruptcy Court [Case No. 12-05635] by filing a complaint containing nearly identical claims and seeking the same relief as demanded in the Complaint. The adversary proceeding was dismissed without

5. Ocwen began servicing the Loan on or about February 16, 2013, and ultimately entered into a loan modification agreement with Plaintiff on or about October 30, 2015.<sup>4</sup>

### **ARGUMENT**

#### **A. This Court Lacks Personal Jurisdiction Over the Moving Defendants.**

Service of process is the method through which a court may acquire jurisdiction over a defendant. In the absence of service of process, a court may not exercise power over a party the complaint names as a defendant. *See, e.g., Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). Here, Plaintiff names the Moving Defendants as defendants in the Complaint but has not shown that the Moving Defendants were properly served with the Complaint and accompanying Summons. While the Summons was issued by the Clerk on December 3, 2012 [Dkt. No. 3], no certificates of service were filed on the docket by Plaintiff indicating whether the Moving Defendants were served with the Complaint and Summons. Accordingly, the Complaint should be dismissed with respect to the Moving Defendants pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(5), as made applicable by Bankruptcy Rule 7012(b).

#### **B. The Complaint Fails To State A Claim Upon Which Relief Can Be Granted.**

The Moving Defendants adopt and fully incorporate herein by reference the arguments, points, and authorities made by the ResCap Defendants in the ResCap Motion to Dismiss in support of their argument that the Complaint should be dismissed pursuant to Bankruptcy Rule 7012(b) and Fed. R. Civ. P. 12(b)(6).

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Plaintiff obtaining any relief pursuant to an order entered by the Georgia Bankruptcy Court on July 1, 2013 [Georgia Bankruptcy Case Dkt. No. 15].

<sup>4</sup> *See* ResCap Motion to Dismiss ¶¶7-8.

**CONCLUSION**

WHEREFORE, the Moving Defendants respectfully request the Court enter an order (i) granting the Motion, (ii) dismissing the claims in the Complaint in its entirety with prejudice against the Moving Defendants, (iii) awarding Moving Defendants their attorney's fees and expenses in connection with this litigation, and (iv) granting Moving Defendants such other and further relief as is just and proper.

Dated: New York, New York  
November 2, 2016

TROUTMAN SANDERS LLP

By: /s/ Brett D. Goodman

Brett D. Goodman  
875 Third Avenue  
New York, New York 10022  
Tel. No. (212) 704-6000  
Fax No. (212) 704-6288

-and-

Matthew R. Brooks  
Bank of America Plaza  
600 Peachtree Street, Suite 5200  
Atlanta, Georgia 30308-2216  
Tel. No.: (404) 885-3000  
Fax No.: (404) 885-3900

*Counsel for Defendants Mortgage Electronic  
Registration System, Inc., Duane Thompson, Judy  
Faber, and U.S. Bank National Association*