

Hearing Date and Time: February 28, 2017 at 10:00 a.m. (Prevailing Eastern Time)

Response Date and Time: February 21, 2017 at 4:00 p.m. (Prevailing Eastern Time)

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

-----X	:	
	:	
Beverlie Roseberry, 3900 Oldfield Crossing	:	
Drive Apt 215 Jacksonville, FL 32223	:	Adv. Proc. 16-01202 (MG)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
GMAC Mortgage, LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X	:	
In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,	:	
	:	Chapter 11
	:	
Debtors.	:	Jointly Administered
-----X	:	

**THE RESCAP LIQUIDATING TRUST'S MOTION
TO DISMISS PLAINTIFF'S ADVERSARY COMPLAINT**



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The ResCap Liquidating Trust (the “Liquidating Trust”), as successor in interest to GMAC Mortgage, LLC (“GMACM” or “Defendant”) named as a defendant in the above-referenced adversary proceeding (the “Adversary Proceeding”), and the other debtors in the above-captioned chapter 11 cases (collectively, the “Debtors”), hereby submits this motion (the “Motion”) to dismiss the Adversary Proceeding commenced by Plaintiff Beverlie Roseberry (“Plaintiff”).¹ The Liquidating Trust seeks entry of an order substantially in the form annexed hereto as Exhibit 1 dismissing the Adversary Proceeding with prejudice for Plaintiff’s failure to state a claim upon which relief can be granted, and for insufficient service. In support of the Motion, the Liquidating Trust submits the declaration of Kathy Priore, assistant counsel to the Liquidating Trust (the “Priore Declaration”), attached hereto as Exhibit 2.

I. PRELIMINARY STATEMENT

1. The Adversary Proceeding should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. Although the Complaint contains a number of vague and general allegations against all of the Defendants, there are no specific allegations regarding any wrongful action by GMACM or how any of the general allegations relate to Plaintiff’s loan. Therefore, the allegations are insufficiently pled under the pleading standards of Fed. R. Civ. P. 8 and 9. Furthermore, while it is far from clear the precise causes of action Plaintiff is asserting, to the extent Plaintiff asserts causes of action for violation of the Fair Debt Collection Practices Act (the “FDCPA”) and the False Claims Act (the “FCA”), these causes of action fail as a matter of law. Plaintiff’s FDCPA claim is barred by the statute of limitations, and the FCA claim fails because Plaintiff has not asserted a fraudulent claim that was

¹ In the section of the Complaint that lists the parties, William G. Ryder is also listed as a plaintiff, but his name is not included in either the caption or the signature block of the Complaint. It is unclear if William G. Ryder is intended to be included as a named plaintiff.

made by GMACM to the United States government. In addition, Plaintiff did not comply with the mandatory filing requirements of the statute.

2. The adversary proceeding should also be dismissed for two additional reasons. First, because Plaintiff failed to serve the summons and complaint on the Liquidating Trust (as successor in interest to GMACM), the Complaint should be dismissed under Fed. R. Civ. P. 12(b)(5). Second, Plaintiff has not preserved her right to seek a recovery from the Debtors or the Liquidating Trust, as the Adversary Proceeding was commenced after the General Bar Date (defined below) and Plaintiff did not file a proof of claim in the Debtors' Chapter 11 Cases. As a result, the Court should dismiss the Adversary Proceeding with prejudice as to GMACM.²

II. JURISDICTION AND VENUE

3. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 (a) and 1334(b). Venue is proper under 28 U.S.C. § 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2). Nonetheless, pursuant to Local Bankruptcy Rule 7012-1, the Liquidating Trust consents to entry of a final order or judgment by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

² The Complaint was filed well over a year and a half after the effective date of the Debtors' Plan (as defined below). The Liquidating Trust expressly reserves the right to enforce the injunctive provision of the Plan and Confirmation Order (as defined below) against the Plaintiff.

III. BACKGROUND

A. General Bankruptcy Case Background

4. On May 14, 2012, Residential Capital, LLC and certain of its Debtor affiliates each filed a voluntary petition in this Court for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

5. On May 16, 2012, the Court entered an order [Case No. 12-12020, Docket No. 96] appointing Kurtzman Carson Consultants LLC (“KCC”) as the notice and claims agent in these chapter 11 cases. Among other things, KCC is authorized to (a) receive, maintain, and record and otherwise administer the proofs of claim filed in these chapter 11 cases and (b) maintain the official claims register for the Debtors (the “Claims Register”).

6. On August 29, 2012, this Court entered an order approving the Debtors’ motion to establish procedures for filing proofs of claim in the chapter 11 cases [Case No. 12-12020, Docket No. 1309] (the “Bar Date Order”).

7. The Bar Date Order established, among other things, (i) November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to file proofs of claim by virtually all creditors against the Debtors (as extended, the “General Bar Date”) and prescribing the form and manner for filing proofs of claim; and (ii) November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for governmental units to file proofs of claim (the “Governmental Bar Date”). Bar Date Order ¶¶ 2, 3. On November 7, 2012, the Court entered an order extending the General Bar Date to November 16, 2012 at 5:00 p.m. (Prevailing Eastern Time) [Case No. 12-12020, Docket No. 2093]. The Governmental Bar Date was not extended.

8. Plaintiff was served with notice of the General Bar Date but did not file a proof of claim.³

9. On November 21, 2012, this Court entered an order approving the sale of the Debtors' mortgage loan servicing platform to Ocwen Loan Servicing, LLC ("Ocwen").⁴

10. On February 15, 2013, the Ocwen sale closed.

11. On December 11, 2013, the Court entered an *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the "Confirmation Order") approving the terms of the Chapter 11 plan, as amended (the "Plan"), filed in these chapter 11 cases [Case No. 12-12020, Docket No. 6065]. On December 17, 2013, the Effective Date (as defined in the Plan) of the Plan occurred, and, among other things, the Liquidating Trust was established [Case No. 12-12020, Docket No. 6137].

12. The Plan provides for the creation and implementation of the Liquidating Trust, which, among other things, is "authorized to make distributions and other payments in accordance with the Plan and the Liquidating Trust Agreement" and is responsible for the wind down of the affairs of the Debtors' estates. See Plan, Art. VI.A-D; see also Confirmation Order ¶ 22. Pursuant to the Confirmation Order and the Plan, the Liquidating Trust was vested with

³ The Liquidating Trust confirmed that Plaintiff was served with notice of the bar date. See Affidavit of Service attached hereto as Exhibit 3; see also *Affidavit of Service of Clarissa D. Cu re: Notice of Deadlines for Filing Proofs of Claim* at 9540 of 12015 [Case No. 12-12020, Docket No. 1412].

⁴ See *Order under 11 U.S.C. §§ 105, 363, and 365 and Fed. Bankr. P. 2002, 6004, 6006, and 9014 (I) Approving (A) Sale of Debtors' Assets Pursuant to Asset Purchase Agreement with Ocwen Loan Servicing, LLC; (B) Sale of Purchased Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Thereto; (D) Related Agreements; and (II) Granting Related Relief* [Case No. 12-12020, Docket No. 2246].

broad authority over the post-confirmation liquidation and distribution of the Debtors' assets.

See generally, Confirmation Order ¶¶ 26, 30, 48; Plan, Art. VI.

B. Plaintiff's Mortgage Loan

13. Plaintiff is a borrower under a mortgage loan (the "Loan"), that was originated by BancFinancial, a division of National Bank of Commerce on or about February 27, 2004. The Loan was evidenced by an adjustable rate note in the amount of \$246,550 (the "Note"), which was secured by real property located at 1641 White Oak Cove, Loganville, GA 30052 (the "Property"). See Priore Declaration ¶ 4.

14. GMACM serviced the Loan until February 16, 2013, at which time servicing of the Loan was transferred to Ocwen. See Priore Declaration ¶ 5.

15. Upon information and belief, Plaintiff defaulted on the Loan on June 1, 2015, and as a result, foreclosure proceedings were commenced on March 16, 2016.

C. The Adversary Proceeding

16. On September 1, 2016, Plaintiff filed a complaint (the "Complaint") initiating this Adversary Proceeding (the "Adversary Proceeding") [AP Docket No. 1]. The Complaint names as defendants and asserts causes of action against GMACM, Ocwen, Aldridge Pite, LLP, and Deutsche Bank National Trust Company. See Complaint ¶¶ 10, 16.

17. On September 1, 2016, a summons was issued by the clerk of this Court [AP Docket No. 2] (the "Summons"). To the best of the Liquidating Trust's knowledge, the Summons was never served on the Liquidating Trust (as successor in interest to GMACM). As of the date hereof, the docket in the Adversary Proceeding does not reflect the filing of an affidavit or certificate of service of the Summons or the Complaint.

IV. ARGUMENT

18. Bankruptcy Rule 7012 incorporates by reference Rule 12(b)-12(i) of the Federal Rules of Civil Procedure (“FRCP”). FRCP 12(b) provides that a party may assert specified defenses by motion, including failure to state a claim upon which relief can be granted, and that a motion asserting any of these defenses may be made before pleading. The Adversary Proceeding should be dismissed pursuant to Bankruptcy Rule 7012(b)(5) and (b)(6) because Plaintiff has failed to serve the Summons on the Liquidating Trust and has failed to state a claim upon which relief can be granted.

The Adversary Proceeding Should Be Dismissed for Failure to Serve the Summons

19. “Rule 12(b)(5) provides for dismissal of a complaint for insufficient service of process.” Hahn v. Office & Prof’l Emps. Int’l Union, AFL-CIO, 107 F. Supp. 3d 379, 382 (S.D.N.Y. 2015). Fed. R. Bankr. P. 7012(b)(5) incorporates Rule 12(b)(5). “On a Rule 12(b)(5) motion to dismiss, the plaintiff bears the burden of establishing that service was sufficient.” Khan v. Khan, 360 Fed. Appx. 202, 203 (2d Cir. 2010).

20. Fed. R. Bankr. P. 7004 provides for the requirements of service in Adversary Proceedings, which includes a requirement that a summons be either delivered or mailed within seven days of the summons being issued. See Fed. R. Bankr. P. 7004(e). FRCP 4(l)(1), which is incorporated into Fed. R. Bankr. P. 7004(a)(1), requires proof of service be made to the court by the server’s affidavit. See Fed. R. Civ. P. 4(l)(1).

21. To the best of its knowledge, the Liquidating Trust (as successor in interest to GMACM) was not served with the Summons by Plaintiff, and no proof of service was made to the Court. As a result, Plaintiff has failed to comply with Fed. R. Bankr. P. 7004 and FRCP 4. As a result, the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(5) and Fed. R. Bankr. P. 7012.

The Adversary Proceeding Should be Dismissed Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6)

Legal Standard

22. FRCP 12(b)(6) permits dismissal of an action for failure to state a claim upon which relief can be granted. For FRCP 12(b)(6) purposes, a court must accept the plaintiff's factual allegations as true, drawing all reasonable inferences in the plaintiff's favor. Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996). The sole issue raised by a motion to dismiss pursuant to FRCP 12(b)(6) is whether the facts pleaded, if established, would support a claim for relief. Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). If as a matter of law "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," a claim must be dismissed. Id. at 327 (citation omitted).

23. The Court's review on a motion to dismiss pursuant to FRCP 12(b)(6) is generally limited to "the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007) (citation omitted). See also Fed. R. Evid. 201(b), (c) ("(b) The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. . . . (c) The court: (1) may take judicial notice on its own; or (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.").

24. Moreover, while facts must be accepted as alleged, this does not automatically extend to bald assertions or legal conclusions. EGP Fuels Co. v. Port of Houston Auth. (In re Enron Corp.), Adv. Proc. No. 03-92511 (AJG), 2006 Bankr. LEXIS 4658, at *5-6

(Bankr. S.D.N.Y. June 2, 2006). A court considering a motion to dismiss can disregard conclusory allegations and judge the complaint only on well-pleaded factual allegations. Starr v. Sony BMG Music Entm't, 592 F.3d 314, 321 (2d Cir. 2010). See also Papasan v. Allain, 478 U.S. 265, 286 (1986) (stating that, on a motion to dismiss, courts “are not bound to accept as true a legal conclusion couched as a factual allegation.”)

25. Specifically, FRCP 8(a), which Fed. R. Bankr. P. 7008 makes applicable to adversary proceedings, demand more than an unadorned accusation that is not supported by any specific asserted facts and requires “fair notice of what the ... claim is and the grounds upon which it rests.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted). A pleading that merely offers labels and conclusions or a formulaic recitation of the elements of a cause of action does not suffice, nor does a complaint that tenders “naked assertion[s]” devoid of “further factual enhancement.” Id. at 555, 557; see also Spool v. World Child Int’l Adoption Agency, 520 F.3d 178, 183 (2d Cir. 2008).

26. In addition, allegations involving fraud must satisfy the requirements of FRCP 9(b), which provides that “a party must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b).

27. Although complaints drafted by *pro se* plaintiffs are to be “construed liberally,” claims asserted by *pro se* plaintiffs must nonetheless be supported by specific and detailed factual allegations sufficient to provide the court and the defendant with “a fair understanding of what the plaintiff is complaining about and . . . whether there is a legal basis for recovery.” Iwachiw v. N.Y.C. Bd. of Elections, 126 Fed. Appx. 27, 29 (2d Cir. 2005) (citation omitted).

Plaintiff's Allegations Fail to State a Claim

Plaintiff's Allegations Do Not Meet the Pleading Standards of FRCP 8 and 9

28. The Plaintiff's factual allegations fail to state a claim for a number of reasons. As an initial matter, the allegations fail because they are conclusory and lack the specificity necessary for the Liquidating Trust to sufficiently respond. In the Complaint, Plaintiff does not make any specific allegations against GMACM, instead Plaintiff makes general allegations against "Defendants" without distinguishing which defendants she is referring to. This makes it impossible for the Liquidating Trust to determine what specific alleged unlawful action, if any, Plaintiff is accusing GMACM of engaging in. Furthermore, even these general allegations are conclusory and therefore fail to meet the standards of Twombly. For example, Plaintiff makes various general allegations regarding allegedly fraudulent mortgage assignments, but does not allege what mortgage assignments were fraudulent, how the mortgage assignments were fraudulent, who allegedly executed the fraudulent mortgage assignments, when the allegedly fraudulent mortgage assignments were executed, or how these allegedly fraudulent mortgage assignments relate to or affect Plaintiff. As a result, Claimant has failed to assert what wrongdoing any of the Defendants, including GMACM, participated in.

29. From what can be gleaned from the allegations, it appears that they purport to relate to the servicing of the Loan by Ocwen and the subsequent foreclosure sale, neither of which involved GMACM. As a result, the Complaint fails to state a claim upon which relief can be granted and should be dismissed under Fed. R. Civ. P. 12(b)(6).

30. Furthermore, it is unclear from the Complaint what causes of action Plaintiff is asserting or how the vague allegations correspond to those causes of action. Plaintiff purports to assert a cause of action for violation of the "Fair Debt Collection Act and Statute of Limitation Expired to Collect Debt" but then discusses the Federal False Claims Act and

allegations of fraud and other vague assertions of wrongdoing. The lack of clarity in these allegations also amounts to a violation of Rule 8 because it makes it impossible for the Liquidating Trust to respond to the ambiguous allegations or raise appropriate and pertinent affirmative defenses. As a result, the Complaint should be dismissed for failure to state a claim.

Plaintiff's FDCPA and FCA Claims Fail as a Matter of Law

31. Even assuming that Plaintiff is asserting causes of action for violation of the FDCPA and the FCA (a point the Liquidating Trust does not concede), both of these causes of action fail as matter of law against GMACM. Any violation of the FDCPA must be brought within one year of the alleged violation. See 15 U.S.C. § 1692k(d).⁵ Since GMACM has had no involvement with this loan since February 16, 2013, the statute of limitations for any violation of the FDCPA would have expired on February 16, 2014, more than two years before the Complaint was filed. Therefore, even assuming Plaintiff has pled a claim under the FDCPA (an issue the Liquidating Trust does not concede), Plaintiff's FDCPA claim is barred by the statute of limitations and fails as a matter of law.

32. Additionally, even assuming Plaintiff is asserting a claim under the FCA, Plaintiff has failed to sufficiently plead an FCA violation because, to impose liability under the FCA, a plaintiff must show that defendants made a claim to the United States government that was fraudulent. See 31 U.S.C. § 3729. Here, although Plaintiff asserts that she "seeks to recover damages and civil penalties arising from the sale by Defendant and other forms of asset-backed securities, using funds provided by the United States government," see Complaint ¶ 15, there is no allegation that GMACM made a claim to the United States government or any explanation of

how said claim was fraudulent. In addition, Plaintiff has not brought any claim on behalf of the United States government. Therefore, Plaintiff's FCA claim also fails.

33. Even if Plaintiff's FCA claim did not fail as a matter of law, the FCA claim must still be dismissed because Plaintiff failed to comply with the requirements of 31 U.S.C. § 3730. The statute mandates that "[t]he complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders." 31 U.S.C. § 3730(b)(2). The Second Circuit has held that failure to file an FCA complaint under seal warrants dismissal of the complaint with prejudice. See United States ex rel. Pilon v. Martin Marietta Corp., 60 F.3d 995, 1000 (2d Cir. 1995) ("We conclude that it was an abuse of discretion to dismiss [plaintiff's] *qui tam* claims without prejudice because ... the [plaintiffs] failure to comply with the filing and service provisions [of § 3730(b)(2)] irreversibly frustrated the congressional goals underlying those provisions.") (citation and internal quotations omitted). In addition, the Plaintiff may not bring the action *pro se*. See United States ex rel. Margent Servs. v. Flaherty, 540 F. 3d 89, 92 (2d Cir. 2008) (holding that a *pro se* relator may not bring a *qui tam* action under the FCA).

34. Here, Plaintiff did not file the Complaint under seal, and therefore her purported FCA claim (assuming one was pled) must be dismissed with prejudice.

35. Finally, even if the claim under the FCA had been properly asserted this Court "lacks jurisdiction to determine such a claim because *qui tam* suits under the False Claims

(cont'd from previous page)

⁵ "An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs." 15 U.S.C. 1692k(d).

Act must be heard in a federal district court.” In re Syntax-Brilliant Corp., 554 B.R. 323, 328 n. 18 (Bank. D. Del. 2016).

Plaintiff Did Not Preserve Any Claims Against the Debtors or the Liquidating Trust

36. In addition to the reasons stated above, the Adversary Proceeding should be dismissed as to GMACM because there is no remedy available to Plaintiff from the Liquidating Trust. Plaintiff seeks relief in the form of a stay of a foreclosure sale, a declaratory judgment that her mortgage is void, an order to cease and desist violations of the FCA, and damages. The only aspect of this relief that relates to GMACM or the Liquidating Trust is unspecified damages, because neither GMACM nor the Liquidating Trust have any interest in either the Loan or the Property. However, that form of relief is also unavailable to Plaintiff because she did not file a proof of claim prior to the General Bar Date and therefore has not preserved her rights to seek a recovery from the Debtors or the Liquidating Trust. In addition, this Adversary Proceeding was commenced almost four years after the Bar Date and thus cannot serve to preserve any claims against the Debtors. As a result, there is no relief that the Court can grant as to GMACM.

37. For the reasons set forth above, the Adversary Proceeding should be dismissed in its entirety for failure to state a claim upon which relief can be granted pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6).

V. CONCLUSION

Accordingly, for the reasons set forth herein, the Liquidating Trust respectfully requests that the Court dismiss the Adversary Proceeding with prejudice and grant such other and further relief as it deems just and proper.

Dated: January 31, 2017
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum

Jordan A. Wishnew

Jessica J. Arett

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Counsel for the ResCap Liquidating Trust

Hearing Date and Time: February 28, 2017 at 10:00 a.m. (Prevailing Eastern Time)
Response Date and Time: February 21, 2017 at 4:00 p.m. (Prevailing Eastern Time)

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

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Drive Apt 215 Jacksonville, FL 32223	:	Adv. Proc. 16-01202 (MG)
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Plaintiff,	:	
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Defendants.	:	
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In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,	:	
	:	Chapter 11
	:	
Debtors.	:	Jointly Administered
-----X	:	

**NOTICE OF THE RESCAP LIQUIDATING TRUST'S MOTION
TO DISMISS PLAINTIFF'S ADVERSARY COMPLAINT**

PLEASE TAKE NOTICE that the undersigned have filed the attached *ResCap Liquidating Trust's Motion to Dismiss Plaintiff's Adversary Complaint* (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will take place on **February 28, 2017 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 523 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for 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 case filing system, and be served, so as to be received no later than **February 21, 2017, at 4:00 p.m. (Prevailing Eastern Time)**, upon (a) the 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) counsel to The ResCap Liquidating Trust, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attention: Norman S. Rosenbaum, Jordan A. Wishnew and Jessica J. Arett); (c) 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 A. Riffkin and Brian S. Masumoto); (d) The ResCap Liquidating Trust, Jill Horner (Jill.Horner@rescapestate.com) and Paul Grande, ResCap Liquidating Trust Chief Treasury Director (paul.grande@rescapestate.com); (e) Beverlie Roseberry, 3900 Oldfield Crossing Drive, Apt. 215, Jacksonville, FL 32223; (f) counsel to Aldridge Pite LLP, Kozeny, McCubbin

& Katz, LLP, 40 Marcus Drive, Suite 200, Melville, New York 11747; and (g) counsel for Ocwen Loan Servicing, LLC, and Deutsche Bank Trust Company, as Trustee for Harbor View Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2004, Duane Morris LLP, 30 South 17th Street, Philadelphia, PA 19103-4196 (Attention: Brett L. Messinger).

PLEASE TAKE FURTHER NOTICE that, if no objections to the Motion are timely filed, served and received in accordance with this Notice, the Court may enter the Motion without further notice or hearing.

Dated: January 31, 2017
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum

Jordan A. Wishnew

Jessica J. Arett

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Counsel for the ResCap Liquidating Trust

Exhibit 1

Proposed Order

2. The Complaint is dismissed with prejudice in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted, as made applicable to the Adversary Proceeding by Bankruptcy Rule 7012(b).

3. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: _____, 2017
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 2

Declaration of Kathy Priore

**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
_____)	

**DECLARATION OF KATHY PRIORE IN SUPPORT OF THE RESCAP LIQUIDATING
TRUST’S MOTION TO DISMISS PLAINTIFF’S ADVERSARY COMPLAINT**

I, Kathy Priore, hereby declare as follows:

1. I serve as Associate Counsel for the ResCap Liquidating Trust (the “Liquidating Trust”), established pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 6030] confirmed in the above-captioned Chapter 11 Cases. During the Chapter 11 Cases, I served as Associate Counsel in the legal department of Residential Capital, LLC (“ResCap”), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors in the above-captioned Chapter 11 Cases (collectively, the “Debtors”). I joined ResCap on May 1, 2008 as in-house litigation counsel. Prior to my in-house litigation counsel position, I held various roles within the legal department at ResCap.

2. In my role as Associate Counsel at ResCap, I was responsible for the management of litigation, including, among others, residential mortgage-related litigation. In connection with ResCap’s chapter 11 filing, I also assisted the Debtors and their professional advisors in connection with the administration of the chapter 11 cases, including the borrower litigation matters pending before this Court. In my current position as Associate Counsel to the Liquidating Trust, among my other duties, I continue to assist the Liquidating Trust in

connection with the claims reconciliation process. I am authorized to submit this declaration (the “Declaration”) in support of the *ResCap Liquidating Trust’s Motion to Dismiss Plaintiff’s Adversary Complaint* (the “Motion”).

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors’ operations, information learned from my review of relevant documents and information I have received through my discussions with other former members of the Debtors’ management or other former employees of the Debtors, the Liquidating Trust’s professionals and consultants. If I were called upon to testify, I could and would testify competently to the facts set forth in the Motion on that basis.

4. Plaintiff is a borrower under a mortgage loan (the “Loan”), that was originated by BancFinancial, a division of National Bank of Commerce on or about February 27, 2004. The Loan was evidenced by an adjustable rate note in the amount of \$246,550 (the “Note”), which was secured by real property located at White Oak Cove, Loganville, GA 30052 (the “Property”).

5. GMACM serviced the Loan until February 16, 2013, at which time servicing of the Loan was transferred to Ocwen Loan Servicing, LLC (“Ocwen”).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 31, 2017

/s/ Kathy Priore
Kathy Priore
Associate Counsel for ResCap Liquidating
Trust

Exhibit 3

Affidavit of Service

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

-----X
:
In re : **Chapter 11**
:
RESIDENTIAL CAPITAL, LLC, et al.,¹ : **Case No. 12-12020 (MG)**
:
:
:
Debtors. : **(Jointly Administered)**
:
-----X

AFFIDAVIT OF SERVICE

I, Clarissa D. Cu, depose and say that I am employed by Kurtzman Carson Consultants LLC (KCC), the claims and noticing agent for the Debtors.

A. On or before June 4, 2012 at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail upon **BEVERLIE ROSEBERRY at 2850 N. 9TH STREET, ST. AUGUSTINE, FL 32084**:

- **Notice of Chapter 11 Bankruptcy Cases, Meeting of Creditors, and Deadlines**, attached hereto as **Exhibit A**

B. Additionally, on or before October 5, 2012 at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail upon **BEVERLIE ROSEBERRY at 2850 N. 9TH STREET, ST. AUGUSTINE, FL 32084**:

- **Notice of Deadlines for Filing Proofs of Claim**, attached hereto as **Exhibit B**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Residential Capital, LLC (0738); ditech, LLC (7228); DOA Holding Properties, LLC (4257); DOA Properties IX (Lots-Other), LLC (3274); EPRE LLC (7974); Equity Investment I, LLC (2797); ETS of Virginia, Inc. (1445); ETS of Washington, Inc. (0665); Executive Trustee Services, LLC (8943); GMAC Model Home Finance I, LLC (8469); GMAC Mortgage USA Corporation (6930); GMAC Mortgage, LLC (4840); GMAC Residential Holding Company, LLC (2190); GMAC RH Settlement Services, LLC (6156); GMACM Borrower LLC (4887); GMACM REO LLC (2043); GMACR Mortgage Products, LLC (6369); GMAC-RFC Holding Company, LLC (3763); HFN REO Sub II, LLC (N/A); Home Connects Lending Services, LLC (9412); Homecomings Financial Real Estate Holdings, LLC (6869); Homecomings Financial, LLC (9458); Ladue Associates, Inc. (3048); Passive Asset Transactions, LLC (4130); PATI A, LLC (2729); PATI B, LLC (2937); PATI Real Estate Holdings, LLC (5201); RAHI A, LLC (3321); RAHI B, LLC (3553); RAHI Real Estate Holdings, LLC (5287); RCSFJV204, LLC (2722); Residential Accredited Loans, Inc. (8240); Residential Asset Mortgage Products, Inc. (5181); Residential Asset Securities Corporation (2653); Residential Consumer Services of Alabama, LLC (5449); Residential Consumer Services of Ohio, LLC (4796); Residential Consumer Services of Texas, LLC (0515); Residential Consumer Services, LLC (2167); Residential Funding Company, LLC (1336); Residential Funding Mortgage Exchange, LLC (4247); Residential Funding Mortgage Securities I, Inc. (6294); Residential Funding Mortgage Securities II, Inc. (8858); Residential Funding Real Estate Holdings, LLC (6505); Residential Mortgage Real Estate Holdings, LLC (7180); RFC Asset Holdings II, LLC (4034); RFC Asset Management, LLC (4678); RFC Borrower LLC (5558); RFC Constructing Funding, LLC (5730); RFC REO LLC (2407); RFC SFJV-2002, LLC (4670); RFC-GSAP Servicer Advance, LLC (0289)

C. Due to the voluminous and confidential nature of the customer service lists, please find attached a screen shot detailing the affected claimant's information in the database as on file with KCC, attached hereto as **Exhibit C**.

Dated: January 3, 2017



Clarissa D. Cu

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 3rd of January, 2017, by Clarissa D. Cu, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: _____

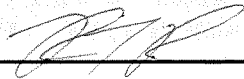


EXHIBIT A

UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF NEW YORK		
In re Residential Capital, LLC, et al., Debtors.	Chapter 11 Case No: 12-12020 (MG) (Jointly Administered)	
NOTICE OF CHAPTER 11 BANKRUPTCY CASES, MEETING OF CREDITORS, AND DEADLINES		
Chapter 11 bankruptcy cases concerning the Debtors listed below were filed on May 14, 2012. You may be a creditor of one of the Debtors. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed with the Bankruptcy Court, including lists of the Debtors’ properties and debts, are available for inspection at the office of the Clerk of the Bankruptcy Court and the Bankruptcy Court’s website, www.nysb.uscourts.gov or by accessing the website maintained by the Debtors’ claims and noticing agent, www.kccllc.net/rescap . Note that a PACER password is needed to access documents on the Bankruptcy Court’s website (a PACER password may be obtained by accessing the PACER website, http://pacer.psc.uscourts.gov). NOTE: The staff members of the office of the Clerk of the Bankruptcy Court and the Office of the United States Trustee cannot give legal advice.		
If you have any questions regarding this notice, please call the ResCap Homeowner Hotline at (888) 926-3480. You may also submit an inquiry online at www.kccllc.net/rescap .		
Name of Debtor	Case Number	Tax Identification Number
Residential Funding Company, LLC	12-12019 (MG)	93-0891336
Residential Capital, LLC	12-12020 (MG)	20-1770738
ditech, LLC	12-12021 (MG)	23-2887228
DOA Holding Properties, LLC	12-12022 (MG)	26-1424257
DOA Properties IX (Lots-Other), LLC	12-12023 (MG)	26-2783274
EPRE LLC	12-12024 (MG)	26-2747974
Equity Investment I, LLC	12-12025 (MG)	02-0632797
ETS of Virginia, Inc.	12-12026 (MG)	26-4051445
ETS of Washington, Inc.	12-12027 (MG)	45-2910665
Executive Trustee Services, LLC	12-12028 (MG)	23-2778943
GMAC-RFC Holding Company, LLC	12-12029 (MG)	23-2593763
GMAC Model Home Finance I, LLC	12-12030 (MG)	26-2748469
GMAC Mortgage USA Corporation	12-12031 (MG)	20-4796930
GMAC Mortgage, LLC	12-12032 (MG)	23-1694840
GMAC Residential Holding Company, LLC	12-12033 (MG)	91-1902190
GMACRH Settlement Services, LLC	12-12034 (MG)	23-3036156
GMACM Borrower LLC	12-12035 (MG)	45-5064887
GMACM REO LLC	12-12036 (MG)	45-5222043
GMACR Mortgage Products, LLC	12-12037 (MG)	03-0536369
HFN REO Sub II, LLC	12-12038 (MG)	None
Home Connects Lending Services, LLC	12-12039 (MG)	25-1849412
Homecomings Financial Real Estate Holdings, LLC	12-12040 (MG)	26-2736869
Homecomings Financial, LLC	12-12042 (MG)	51-0369458
Ladue Associates, Inc.	12-12043 (MG)	23-1893048
Passive Asset Transaction, LLC	12-12044 (MG)	51-0404130
PATI A, LLC	12-12045 (MG)	26-3722729
PATI B, LLC	12-12046 (MG)	26-3722937
PATI Real Estate Holdings, LLC	12-12047 (MG)	27-0515201
RAHI A, LLC	12-12048 (MG)	26-3723321
RAHI B, LLC	12-12049 (MG)	26-3723553
RAHI Real Estate Holdings, LLC	12-12050 (MG)	27-0515287
RCSFJV2004, LLC	12-12051 (MG)	20-3802722
Residential Accredit Loans, Inc.	12-12052 (MG)	51-0368240
Residential Asset Mortgage Products, Inc.	12-12053 (MG)	41-1955181
Residential Asset Securities Corporation	12-12054 (MG)	51-0362653
Residential Consumer Services of Alabama, LLC	12-12055 (MG)	63-1105449
Residential Consumer Services of Ohio, LLC	12-12056 (MG)	34-1754796
Residential Consumer Services of Texas, LLC	12-12057 (MG)	75-25010515
Residential Consumer Services, LLC	12-12058 (MG)	20-4812167

Residential Funding Mortgage Exchange, LLC	12-12059 (MG)	41-1674247
Residential Funding Mortgage Securities I, Inc.	12-12060 (MG)	75-2006294
Residential Funding Mortgage Securities II, Inc.	12-12061 (MG)	41-1808858
Residential Funding Real Estate Holdings, LLC	12-12062 (MG)	26-2736505
Residential Mortgage Real Estate Holdings, LLC	12-12063 (MG)	26-2737180
RFC-GSAP Servicer Advance, LLC	12-12064 (MG)	26-1960289
RFC Asset Holdings II, LLC	12-12065 (MG)	41-1984034
RFC Asset Management, LLC	12-12066 (MG)	06-1664678
RFC Borrower LLC	12-12068 (MG)	45-5065558
RFC Construction Funding, LLC	12-12069 (MG)	41-1925730
RFC REO LLC	12-12070 (MG)	45-5222407
RFC SFJV-2002, LLC	12-12071 (MG)	06-1664670
Proposed Attorneys for Debtors Larren M. Nashelsky Gary S. Lee Lorenzo Marinuzzi MORRISON & FOERSTER LLP 1290 Avenue of the Americas New York, New York 10104 Telephone: (212) 468-8000 Facsimile: (212) 468-7900		DATE, TIME, AND LOCATION OF MEETING OF CREDITORS PURSUANT TO BANKRUPTCY CODE SECTION 341(a) June 25, 2012 at 1:00 p.m. (ET) 80 Broad Street, Fourth Floor New York, New York 10004
DEADLINE TO FILE A PROOF OF CLAIM None at this time. When the Bankruptcy Court sets a claims deadline, you will be notified and provided a proof of claim form by mail.		
DEADLINE TO FILE A COMPLAINT TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBTS None at this time.		
CREDITORS MAY NOT TAKE CERTAIN ACTIONS AGAINST THE DEBTORS IN MOST INSTANCES, BECAUSE THE FILING OF THE BANKRUPTCY CASE AUTOMATICALLY STAYS CERTAIN COLLECTION AND OTHER ACTIONS AGAINST THE DEBTORS AND THE DEBTORS' PROPERTY. UNDER CERTAIN CIRCUMSTANCES, THE STAY MAY BE LIMITED TO 30 DAYS OR NOT EXIST AT ALL, ALTHOUGH THE DEBTORS CAN REQUEST THE BANKRUPTCY COURT TO EXTEND OR IMPOSE A STAY. IF YOU ATTEMPT TO COLLECT A DEBT OR TAKE OTHER ACTION IN VIOLATION OF THE BANKRUPTCY CODE, YOU MAY BE PENALIZED. COMMON EXAMPLES OF PROHIBITED ACTIONS BY CREDITORS ARE CONTACTING THE DEBTORS TO DEMAND REPAYMENT, TAKING ACTION AGAINST THE DEBTORS TO COLLECT MONEY OWED TO CREDITORS OR TO TAKE PROPERTY OF THE DEBTORS, AND STARTING OR CONTINUING COLLECTION ACTIONS, FORECLOSURE ACTIONS, OR REPOSSESSIONS. CONSULT A LAWYER TO DETERMINE YOUR RIGHTS IN THIS CASE.		
Address of the Clerk of the Bankruptcy Court Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004		For the Bankruptcy Court: Vito Genna Clerk of the Court, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004.
Hours Open: 8:30 a.m. – 5:00 p.m.		Date: May 24, 2012
Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this Bankruptcy Court by each of the Debtors named above, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the Bankruptcy Court. You may be sent a copy of the plan and disclosure statement telling you about the plan, and you might have an opportunity to vote on the plan. You will be sent a notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the Debtors will remain in possession of the Debtors' property and may continue to operate their business.	
Legal Advice	Staff of the office of the Clerk of the Bankruptcy Court cannot give legal advice. Consult a lawyer to determine your rights in this case.	
Creditors Generally May Not	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the Debtors by telephone, mail, or otherwise to demand	

Take Certain Actions	repayment; taking actions to collect money or obtain property from the Debtors; repossessing the Debtors' property; and starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed above. <i>The Debtors' representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Notice	You will not receive notice of all documents filed in these chapter 11 cases. On May 23, 2012, the Bankruptcy Court entered its Order Under bankruptcy Code Sections (102)(1), 105(a) and 105(d), Bankruptcy Rules 1015(c), 2002(m) and 9007 and Local Bankruptcy Rule 2002-2 Establishing Certain Notice, Case Management and Administrative Procedures (the "Notice Procedures Order"). The Notice Procedures Order describes the notice procedures that apply in these chapter 11 cases. All parties who desire to participate in these chapter 11 cases must follow the procedures set forth in the Notice Procedures Order. Parties can obtain a copy of the Notice Procedures Order and all other documents filed electronically with the Bankruptcy Court in these cases, including lists of the Debtors' property and debts, by: (i) contacting the office of the Clerk of the Bankruptcy Court at One Bowling Green, New York, New York 10004-1408, (ii) accessing the Bankruptcy Court's website at www.nysb.uscourts.gov . Note that a PACER (http://www.pacer.psc.uscourts.gov) password and login are needed to access documents on the Court's website; (iii) accessing the website maintained by the Debtors' claims and noticing agent at www.kccllc.net/rescap ; or (iv) contacting the Debtors' counsel at: Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104 (Attn: Darren M. Nashelsky, Esq., Gary S. Lee, Esq. and Lorenzo Marinuzzi, Esq.).
Claims	Schedules of liabilities will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim which is not identified as disputed, contingent, or unliquidated as to amount may, but is not required to, file a proof of claim in these cases. Creditors whose claims are not scheduled or whose claims are scheduled as disputed, contingent, or unliquidated as to amount and who desire to participate in these cases or share in any distribution must file a proof of claim. A creditor who relies on the schedule of liabilities has the responsibility for determining that the claim is listed accurately. A form of proof of claim and notice of the deadline for filing such proof of claim will be sent to you later. A deadline for the last day for filing proofs of claim has not yet been established.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the Debtors, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141(d)(6)(A), you must start a lawsuit by filing a complaint in the office of the Clerk of the Bankruptcy Court by the deadline established by the Bankruptcy Court.
Barclays DIP Order	<p>The Bankruptcy Court is considering the entry of several "final orders," including the final order (the "Barclays DIP Order") to grant the Debtors' Motion For Interim And Final Orders Pursuant To 11 U.S.C. §§ 105, 362, 363(b)(1), 363(f), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) And 364(e) And Bankruptcy Rules 4001 And 6004 (I) Authorizing The Debtors To (A) Enter Into And Perform Under Receivables Purchase Agreements And Mortgage Loan Purchase And Contribution Agreements Relating To Initial Receivables And Mortgage Loans And Receivables Pooling Agreements Relating To Additional Receivables, And (B) Obtaining Postpetition Financing On A Secured, Superpriority Basis, (II) Scheduling A Final Hearing Pursuant To Bankruptcy Rules 4001(b) and 4001(c), And (III) Granting Related Relief.</p> <p>The Debtors are seeking to have the Barclays DIP Order provide, among other things, that the transfers of mortgage loans and servicing advance receivables from Debtors GMAC Mortgage LLC and Residential Funding Company LLC to Debtors GMACM Borrower LLC to RFC Borrower LLC were or are, as applicable, free and clear of all liens, claims and encumbrances pursuant to Section 363(f) of the Bankruptcy Code.</p>
Office of the Clerk of the Bankruptcy Court	Any paper that you file in these bankruptcy cases should be filed at the office of the Clerk of the Bankruptcy Court at the address listed in this notice. You may inspect all papers filed, including the list of the Debtors' property and debts and the list of property claimed as exempt, at the office of the Clerk of the Bankruptcy Court.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

EXHIBIT B

R E S C A P

Residential Capital, LLC (ResCap), previously announced that it and its subsidiaries, including GMAC Mortgage, are restructuring under Chapter 11. Although you may not be familiar with our name, ResCap is the parent company of GMAC Mortgage. You are receiving this letter because you have been identified as a current customer, or were at one time considering completing a loan application with GMAC Mortgage.

From time to time throughout these Chapter 11 proceedings, you may receive legal notices in the mail related to ResCap's bankruptcy case. Enclosed with this letter is a legal document, which is being mailed to a wide range of parties. The legal notice enclosed with this letter relates to the process for filing "Proofs of Claim" in our Chapter 11 proceedings. This notice is being sent to potential creditors who are or may be owed payment for obligations that arose prior to May 14, 2012, the date that ResCap filed for Chapter 11.

ResCap is providing this notice to all customers and mortgage loan applicants not because ResCap believes that you have claims against ResCap, but because ResCap may be unaware of claims a customer believes he or she may have.

The enclosed notice describes the "Bar Date" – the legal deadline by which any creditor must file a Proof of Claim in these Chapter 11 proceedings for any obligations that arose prior to May 14, 2012. **The Bar Date is November 9, 2012 at 5:00 p.m. (Eastern Time).**

Please review the enclosed notice materials carefully. If you believe you have a claim against the Debtors for a matter or obligation that arose prior to May 14, 2012, you must file a Proof of Claim by November 9, 2012 at 5:00 p.m. (Eastern Time), in accordance with the procedures set forth in the notice. **A Proof of Claim form may be obtained at www.kccllc.net/rescap.**

If you are a defendant in a foreclosure action you do not need to file a Proof of Claim to protect your defense to foreclosure, unless you have asserted any affirmative defenses that request monetary relief. You do not need to file a Proof of Claim for your mortgage amount. Your obligations under your loan agreement have not changed. As such, you should continue to make your scheduled loan payments on time and in full to the address listed on your monthly account statement.

For additional information, please contact the ResCap Restructuring Hotline at 888-926-3479, or submit an inquiry at www.kccllc.net/rescap. If you require legal advice, however, you may also wish to consult a lawyer to discuss the filing of a Proof of Claim.

Thank you for your continued support.

Residential Capital, LLC

If you have any questions related to this notice, please call (888) 926-3479

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Gary S. Lee
Lorenzo Marinuzzi

*Counsel for the Debtors and
Debtors in Possession*

**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
)	

NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST RESIDENTIAL CAPITAL, LLC OR ITS AFFILIATED ENTITIES THAT ARE ALSO DEBTORS AND DEBTORS IN POSSESSION:

On August 29, 2012, the United States Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") entered an order (the "Bar Date Order") establishing **November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time)** (the "General Bar Date") as the last date and time for each person or entity (including individuals, partnerships, corporations, joint ventures, corporations, estates, trusts, and governmental units) to file a proof of claim against Residential Capital, LLC its affiliates that are also debtors and debtors in possession in those proceedings (collectively, the "Debtors"). Solely as to governmental units the Bar Date Order established **November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time)** as the last date and time for each such governmental unit to file a proof of claim against the Debtors (the "Governmental Bar Date," and, together with the General Bar Date, the "Bar Dates").

The Bar Dates and the procedures set forth below for filing proofs of claim apply to all claims against the Debtors that arose before May 14, 2012, the date on which the Debtors commenced cases under Chapter 11 of the United States Bankruptcy Code (the "Petition Date"), except for those holders of the claims listed in section 4 below that are specifically excluded from the General Bar Date filing requirement.

1. WHO MUST FILE A PROOF OF CLAIM

You **MUST** file a proof of claim to vote on a Chapter 11 plan filed by the Debtors or to share in distributions from the Debtors' bankruptcy estates if you have a claim that arose before the filing of the Debtors' Chapter 11 petitions on the Petition Date and it is not one of the types of claims described in section 4 below. Claims based on acts or omissions of the Debtors that occurred before the Petition Date must be filed on or before the applicable Bar Date, even if such claims are not now fixed, liquidated or certain or did not mature or become fixed, liquidated or certain before the Petition Date.

Under section 101(5) of the Bankruptcy Code and as used in this Notice, the word "claim" means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

2. WHAT TO FILE

Each filed proof of claim must conform substantially to the Proof of Claim Form (as defined in the Bar Date Order). Copies of the Proof of Claim Form may be obtained at <http://www.kccllc.net/rescap>. Each proof of claim must be **signed** by the claimant or by an authorized agent of the claimant. Each proof of claim must be written in English and be denominated in United States currency. You should attach to each completed proof of claim any documents on which the claim is based (if voluminous, attach a summary) or an explanation as to why the documents are not available.

Any holder of a claim against more than one Debtor must file a separate proof of claim with respect to each such Debtor and all holders of claims must identify on their proof of claim the specific Debtor against which their claim is asserted. A list of the names of the Debtors and their respective case numbers is attached to the Proof of Claim Form.

Under the Bar Date Order, the filing of a Proof of Claim Form shall be deemed to satisfy the procedural requirements for the assertion of administrative priority claims under section 503(b)(9) of the Bankruptcy Code.

3. WHEN AND WHERE TO FILE

Except as provided for herein, all proofs of claim must be filed so as to be actually received **on or before November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time)**, or solely as to governmental units on or before November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time), at:

(i) **If by mail or overnight courier:**

**ResCap Claims Processing Center, c/o KCC
PO Box 5004
Hawthorne, CA 90250**

(ii) **if by hand delivery:**

United States Bankruptcy Court for the Southern District of New York
One Bowling Green, Room 534
New York, New York 10004

or

ResCap Claims Processing Center, c/o KCC
2335 Alaska Ave
El Segundo, CA 90245

Proofs of claim will be deemed timely filed only if **actually received** at the ResCap Claims Processing Center or hand delivered to the U.S. Bankruptcy Court on or before 5:00 p.m. (Prevailing Eastern Time) on the applicable Bar Date. Proofs of claim **may not** be delivered by facsimile, or electronic mail.

4. WHO NEED NOT FILE A PROOF OF CLAIM

You do not need to file a proof of claim on or before the General Bar Date if you are:

- (a) Any person or entity that has **already** properly filed a proof of claim against the applicable Debtor or Debtors with the Clerk of the Bankruptcy Court for the Southern District of New York in a form substantially similar to the Proof of Claim Form;
- (b) Any person or entity whose claim is listed on the Debtors' schedules of assets and liabilities and/or schedules of executory contracts and unexpired leases (collectively, the "Schedules"), **provided that**: (i) the claim is **not** scheduled as "disputed," "contingent" or "unliquidated"; **and** (ii) the claimant agrees with the amount, nature and priority of the claim as set forth in the Schedules; **and** (iii) the claimant agrees that the claim is an obligation of the specific Debtor against which the claim is listed on the Schedules;

- (c) Any person or entity that holds a claim that has been allowed by an order of the Court entered on or before the applicable Bar Date;
- (d) Any person or entity whose claim has been paid in full by any of the Debtors;
- (e) Any person or entity that holds a claim for which specific deadlines have been fixed by an order of the Court entered on or before the applicable Bar Date;
- (f) Any person or entity that holds a claim allowable under sections 503(b) and 507(a) of the Bankruptcy Code as an expense of administration (other than any claim allowable under section 503(b)(9) of the Bankruptcy Code);
- (g) Any Debtor having a claim against another Debtor or any of the non-debtor subsidiaries of Residential Capital, LLC having a claim against any of the Debtors;
- (h) Any person or entity that holds an interest in any of the Debtors, which interest is based exclusively upon the ownership of common stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; provided, however, that interest holders that wish to assert claims (as opposed to ownership interests) against any of the Debtors that arise out of or relate to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, must file Proofs of Claim on or before the applicable Bar Date, unless another exception identified herein applies;
- (i) Any person or entity whose claim is limited exclusively to the repayment of principal, interest, and/or other applicable fees and charges (a "Debt Claim") on or under any bond or note issued or guaranteed by the Debtors pursuant to an indenture (the "Debt Instruments"); provided, however, that (i) the foregoing exclusion in this subparagraph shall not apply to the Indenture Trustee under the applicable Debt Instruments (an "Indenture Trustee"), (ii) the Indenture Trustee shall be required to file one Proof of Claim, on or before the General Bar Date, with respect to all of the Debt Claims on or under each of the applicable Debt Instruments, and (iii) any holder of a Debt Claim wishing to assert a claim, other than a Debt Claim, arising out of or relating to a Debt Instrument shall be required to file a Proof of Claim on or before the Bar Date, unless another exception in this paragraph applies;
- (j) Any person or entity holding a claim for principal, interest and other fees and expenses under the Debtors' secured financing facilities (the "Financing Facilities")¹ to the extent of, and only for such claims relating to the Financing Facilities; or

¹ "Financing Facilities" as used herein shall mean the Debtors' financing facilities that are exempt from filing a Proof of Claim Form as previously ordered by the Court [Docket Nos. 471, 490 and 491].

- (k) Any person or entity that holds a claim against a securitization trust (each a "Trust") that is based exclusively upon the ownership of a note, bond and/or certificate backed by mortgage loans held by the Trust; provided, however, that holders of such notes, bonds and/or certificates that wish to assert claims against the Debtors (as opposed to claims against the applicable Trust) must file Proofs of Claim on or before the applicable Bar Date, unless another exception identified herein applies.

This Notice is being sent to many persons and entities that have had some relationship with or have done business with the Debtors but may not have an unpaid claim against the Debtors. Receipt of this Notice does not mean that you have a claim or that the Debtors or the Court believe that you have a claim against the Debtors.

5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

If you have a claim arising out of the rejection of an executory contract or unexpired lease, you must file a proof of claim by the later of (a) the applicable Bar Date and (b) thirty (30) days after the date of entry of an order of rejection (unless the order of rejection provides otherwise).

6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATE

ANY HOLDER OF A CLAIM THAT IS NOT EXCEPTED FROM THE REQUIREMENTS OF THE BAR DATE ORDER, AS DESCRIBED IN SECTION 4 ABOVE, AND THAT FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM WILL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS, THEIR SUCCESSORS, THEIR CHAPTER 11 ESTATES AND THEIR RESPECTIVE PROPERTY OR FILING A PROOF OF CLAIM WITH RESPECT TO SUCH CLAIM, FROM VOTING ON ANY PLAN OF REORGANIZATION FILED IN THESE CASES AND FROM PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CASES ON ACCOUNT OF SUCH CLAIM OR RECEIVING FURTHER NOTICES REGARDING SUCH CLAIM.

7. THE DEBTORS' SCHEDULES AND ACCESS THERETO

You may be listed as the holder of a claim against one or more of the Debtors in the Debtors' Schedules. If you rely on the Debtors' Schedules, it is your responsibility to determine that your claim is accurately listed on the Schedules. If you agree with the nature, amount and status of your claim as listed on the Debtors' Schedules, and if you do not dispute that your claim is against only the specified Debtor, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need not file a proof of claim. Otherwise, or if you decide to file a proof of claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this Notice.

Copies of the Debtors' Schedules are available for inspection on the Court's internet website at www.nysb.uscourts.gov and on the independent website maintained by the Debtors, <http://www.kccllc.net/rescap>. A login and password to the Court's Public Access to Electronic Court Records ("PACER") are required to access www.nysb.uscourts.gov and can be obtained through the PACER Service Center at www.pacer.psc.uscourts.gov. Copies of the Schedules may also be examined between the hours of 9:00 a.m. and 4:30 p.m. (Prevailing Eastern Time), Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, One Bowling Green, Room 511, New York, New York 10004-1408.

Copies of the Debtors' Schedules may also be obtained by written request to the Debtors' claims agent at the address set forth below:

**ResCap Claims Processing Center
c/o KCC
PO Box 5004
Hawthorne, CA 90250**

8. RESERVATION OF RIGHTS

The Debtors reserve their right to object to any proof of claim, whether filed or scheduled, on any grounds. The Debtors reserve their right to dispute or to assert offsets or defenses to any claim reflected on the Schedules or any amendments thereto, as to amount, liability, classification or otherwise, and to subsequently designate any claim as disputed, contingent, unliquidated or undetermined.

A holder of a possible claim against the Debtors should consult an attorney regarding matters in connection with this Notice, such as whether the holder should file a Proof of Claim.

Dated: New York, New York
August 29, 2012

BY ORDER OF THE COURT

Gary S. Lee
Lorenzo Marinuzzi
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104

*Counsel for the Debtors and
Debtors in Possession*

If you have any questions related to this notice, please call (888) 926-3479

EXHIBIT C

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3 0307673856|
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