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

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Alberto Rodriguez, <i>et al.</i>	:	
	:	Adv. Proc. 19-01320 (MG)
Plaintiffs,	:	
	:	
v.	:	
	:	
Residential Capital, 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	:	

**DEFENDANT’S RESPONSE AND RESERVATION OF RIGHTS TO PLAINTIFFS’  
 MOTION FOR LEAVE TO AMEND THE ADVERSARY PROCEEDING**

Defendant the ResCap Liquidating Trust (the “Liquidating Trust”), successor in interest to the above named defendants Residential Capital, LLC and Homecomings Financial, LLC (the “Defendant”), hereby submits this response and reservation of rights (the “Response”) to the Motion for Leave to Amend the Adversary Proceeding [AP Dkt No. 11] (the “Motion”) filed by the above-captioned plaintiffs (the “Plaintiffs”) and respectively represents as follows:



### **GENERAL BACKGROUND**

1. On May 14, 2012 (the “Petition Date”), each of the above-captioned debtors (the “Debtors”) filed a voluntary petition in this Court for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The cases (the “Chapter 11 Cases”) are being jointly administered pursuant to Federal Rule of Bankruptcy Procedure 1015(b).

2. On December 11, 2013, the Court entered the 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 the Chapter 11 Cases [Dkt. No. 6065]. The Confirmation Order became a final order and on December 17, 2013, the Effective Date (as defined in the Plan) of the Plan occurred [Dkt. No. 6137].

3. The Plan provides for the creation and implementation of the Liquidating Trust. The Liquidating Trust’s role is limited. Primarily, the Liquidating Trust 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.

### **THE ADVERSARY PROCEEDING**

4. On July 12, 2019, Plaintiffs Alberto Rodriguez and Maria Rodriguez initiated the above-referenced adversary proceeding (the “Adversary Proceeding”) by the filing of a complaint naming as defendants Debtors Residential Capital, LLC and Homecomings Financial, LLC, and non-debtors Ocwen Loan Servicing, LLC and does 1 through 15, inclusive (the “Complaint”) [AP Dkt No. 1]. As against the Defendant, the Complaint seeks certain declaratory relief.

5. The Adversary Proceeding is subject to the terms and conditions of the *Amended Order Approving Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplement to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and Former Borrowers and (B) Related Relief*, entered by the Bankruptcy Court in the Chapter 11 Cases on April 22, 2013 [Docket No. 3490] (the "AP Procedures Order").<sup>1</sup>

6. On July 23, 2019, in accordance with the terms of the AP Procedures Order, the Defendant filed and served upon the Plaintiffs a *Notice of Applicability of the Order Approving Mandatory Supplemental AP Procedures for AP Actions* (the "AP Procedures Notice") [AP Docket No. 4]. The AP Procedures Notice advised the Plaintiffs of the terms and conditions of the AP Procedures Order.

7. Among other things, the AP Procedures Order precludes both the Plaintiffs and all named defendants from filing any further pleadings in Adversary Proceeding until the parties comply with the terms and conditions of the AP Procedures Order. The AP Procedures Order first requires the parties to conduct an Initial Conference to discuss the nature of the underlying action and the claims asserted therein. Following the Initial Conference, the parties are required to file a Joint Progress Report with the Court identifying the progress, if any, made during the Initial Conference and how they wish to proceed. If the parties are unable to agree on a joint report, they may file separate Progress Reports. Thereafter, the parties are to schedule a Pre-Trial Status Conference before the Court on a mutually agreeable date. The AP Procedures Order, by its express terms, extends the date by which the Debtor defendants and

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<sup>1</sup> Capitalized terms used and not defined herein have the meanings ascribed to them in the AP Procedures Order.

other named non-debtor defendants are required to answer or otherwise respond to the complaint filed in the applicable adversary proceeding until a date that is thirty days following the Pre-Trial Status Conference. In addition, no party to the adversary proceeding may file any “motion or answer, or otherwise respond” to the complaint filed in the adversary proceeding during this period. AP Procedures Order at 3.

8. On August 29, 2019, in accordance with the AP Procedures Order, the Defendant, by its counsel, and the Plaintiffs conducted an Initial Conference by telephone. The parties in good faith discussed the issues raised in the Complaint. The parties have not reached any resolution; however, the parties mutually agreed to continue their dialogue and if useful, exchange additional information to facilitate the contemplated discussions.

9. On September 6, 2019, Plaintiffs filed a Summary of Conference [AP Dkt. No. 7].<sup>2</sup> On September 23, 2019, Defendant filed its own Progress Report [AP Dkt. No. 8] by which Defendant advised the Court that the parties had conducted the Initial Conference and that Defendant intended to communicate with the Plaintiffs in an effort to discuss how the parties desire to proceed in the Adversary Proceeding.

10. The parties have remained in communication and continued their Initial Conference pursuant to a telephone conference held on December 4, 2019. At the conclusion of the December 4, 2019 call, the parties agreed to exchange information and since that time have done so. If the parties cannot come to a resolution of the Adversary Proceeding, they will reach out to the Court to schedule the Pre-Trial Status Conference. In either case, the Defendant expects that the Court, in short order, will be informed as to how the parties wish to proceed in the Adversary Proceeding.

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<sup>2</sup> Prior to filing the Summary of Conference, the Plaintiffs did not confer with counsel to the Defendant.

**RESPONSE AND RESERVATION OF RIGHTS**<sup>3</sup>

11. The Motion seeks authority to amend the Complaint to add PHH Mortgage Corporation (“PHH”) and Bayview Loan Servicing (“Bayview”) as defendants to the Adversary Proceeding. According to the Motion, the reason they wish to do so is that Plaintiffs were notified that PHH acquired Ocwen Loan Servicing, LLC and that Bayview is now the servicer of the Plaintiffs’ mortgage loan.

12. The filing of the Motion contravenes the express terms of the AP Procedures Order. Specifically the order expressly prohibits any party to the Adversary Proceeding from filing a motion with respect to the Complaint until the Court has conducted the Pre-Trial Status Conference and for a period of thirty days thereafter. See AP Procedures Order at 3.

13. Defendant appreciates that the Plaintiffs are appearing *pro se* and may not fully comprehend the import of the AP Procedures Order. Nonetheless, the Motion was filed in violation of the AP Procedures Order. One objective of the AP Procedures Order is to provide the parties a period to confer and if possible, resolve the action. The limited stay on filings, affords the parties the opportunity to do so free from the need to continue the active litigation of the matter.

14. Accordingly, the Defendant respectfully submits that the Court need not take any action with respect to the Motion at this time. If the Adversary Proceeding cannot be resolved, the Parties will schedule and appear before the Court for the Pre-Trial Status Conference. At that time, the Court can prescribe an appropriate path forward and the scheduling of briefing in the Adversary Proceeding.

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<sup>3</sup> The Defendants are filing this Response at the direction of the Court.

15. The Defendant expressly reserves any all rights and defenses with respect to the Motion and the Adversary Proceeding, including, without limitation, the right to oppose and contest the (i) Motion on both procedural and substantive grounds; and (ii) Adversary Proceeding on the grounds that it is barred by the injunctive provisions of the Plan and Confirmation Order, and that Plaintiff is not entitled to any relief against the Defendant.

Dated: December 18, 2019  
New York, New York

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