

**LAW OFFICES OF  
EDWARD N. TOBIAS, L.L.C.**  
226 Richwood Road  
Mullica Hill, New Jersey 08062  
(732) 766-3903  
**ATTORNEYS PRO SE FOR:**  
**Edward N. Tobias and Suzanne  
Koegler**

EDWARD N. TOBIAS and  
SUZANNE M. KOEGLER

Claimant(s).

In re:

RESIDENTIAL CAPITAL, LLC, et al.

Debtor(s)

**UNITED STATES BANKRUPTCY  
COURT**

**SOUTHERN DISTRICT OF NEW  
YORK**

**CASE NO.**

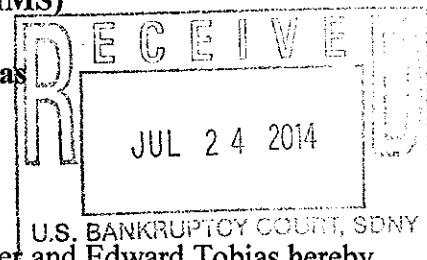
**12-12020 (MG)**

**CHAPTER 11  
JOINTLY ADMINISTERED**

**NOTICE OF OBJECTION TO RESCAP BORROWERS CLAIMS TRUST'S SIXTY-  
NINTH OMNIBUS OBJECTION TO CLAIMS  
(NO LIABILITY BORROWER CLAIMS)**

**Suzanne Koegler and Edward Tobias**

**Claim No. 1466  
Filed 10/22/12**



PLEASE TAKE NOTICE that Claimant(s) Suzanne Koegler and Edward Tobias hereby  
object to RESCAP BORROWERS CLAIMS TRUST'S SIXTY-NINTH OMNIBUS  
OBJECTION TO CLAIMS (NO LIABILITY BORROWER CLAIMS).

**Recitals**

1. At the time of the bankruptcy filing of GMAC Mortgage, LLC and other related entities (GMAC), claimants were current loan customers based on loans originated and serviced by one of the debtors for the property located at 93 Wisconsin St., Long Beach, New York. Per Claim No. 1466, dated October 17, 2012 and marked as filed on October 22,



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2012, claimants advised that claims for damages based Consumer Fraud or other claim / affirmative defenses to foreclosure requesting monetary relief were being made in the amount of \$1,000,000.00 for the property<sup>1</sup>. At the time of filing, documents were not available because the Complaint in the matter(s) had not yet been filed.<sup>2</sup>

2. Notice is hereby given that the Trust should direct correspondence and reply to this response to the current address of the Claimant(s):

Suzanne Koegler and Edward Tobias  
226 Richwood Road  
Mullica Hill, New Jersey 08062

3. Claimant(s) Suzanne Koegler and Edward Tobias possess ultimate authority to reconcile, settle, or otherwise resolve these claim(s); the telephone number of Claimant(s) is (732) 766-3903.
4. Claimant(s) request permission to participate telephonically in the hearing, scheduled on August 13, 2014, or other date as determined by the Bankruptcy Court.

#### Response

On May 29, a Hearing was held regarding the ResCap Borrower Claims Trust's Sixty-First Omnibus Objection to Claims (No Liability Borrower Claims) (ECF Doc. #6777). That Objection related to Claim No. 1467 (75 Princeton Oval, Freehold, NJ ("the Freehold Property")), which claim was disallowed and expunged pursuant to the Memorandum Opinion and Order of the Hon. Martin Glenn, issued June 5, 2014 (ECF Doc. #7052). The instant Objection and Claim No. 1466 relates to real property located at 93 Wisconsin Street, Long Beach, NY (the "Long Beach Property"). As noted by Judge Glenn, only the "Freehold Property" (Claim No. 1467) is subject to the Order (Id., P3); thus this response will serve to detail the substantive and factual differences between the two claims and show that the reasons for expungement outlined in the Order do not apply to the claim related to the "Long Beach Property" and that the facts asserted against Debtor Residential Capital, LLC ("ResCap") form the basis for a valid claim against ResCap.

In connection with the Freehold Property, on May 9, 2003, GMAC Mortgage Corp., n/k/a GMACM originated a \$320,000 loan to the Claimants (the "Freehold Loan"). GMACM serviced the Freehold Loan until servicing was transferred to Green Tree Servicing on February 1, 2013. In connection with the Long Beach Property, on September 2, 2005, GMAC Mortgage Corp., n/k/a GMACM originated a \$299,000 loan to the Claimants (the "Long Beach Loan"). GMACM serviced the Long Beach Loan until servicing was transferred to Ocwen Servicing on February 16, 2013.

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<sup>1</sup> The amount of \$1,000,000.00 requested as relief was a token amount. At the time of filing actual damages were unknown. Actual damages can now be approximated as detailed further in this submission. Additionally at that time, there was uncertainty whether one or both of these loans would be subject to foreclosure, therefore such defenses were preserved.

<sup>2</sup> On October 28, 2013, a Complaint was filed by Claimant(s) against Debtor(s) in the United States District Court, District of New Jersey (Civil Action No. 3:13-CV-6471 (PGS(TJB)))

The Order discusses one of the most significant differences between the two properties, that the Freehold Loan was never referred to foreclosure and that there was no instance where the Claimants contacted the Debtors regarding a loan modification or any other loss mitigation option. On February 14, 2013 Claimants sent GMACM a Borrowers Response Package related to the Long Beach Property only (See attached). They received no response other than the letter, dated February 16, 2013, advising that their account had already been transferred to Ocwen on February 1, 2013. The Loan History obtained from the Trustee indicates that the Long Beach Loan was considered "distressed." (See attached) Conversely, the Freehold Loan was considered current and servicing was transferred to Green Tree. (See attached) The difference between these two properties stems directly from Claimant's request for loan forbearance and its extension, above and beyond the "matter of course" granting of late charge bypasses due to Sandy. Further, on June 1, 2013, Claimants sent a check in the amount of \$19,001.68 in full payment of the forbore amount. Therefore, these facts stand in direct contravention of the Trustees records concerning the Freehold property and consequently the Court's Opinion related to that property. This also is addressed in Plaintiffs' Response of January 7, 2013 regarding Count 3 of the Complaint<sup>3</sup>. As such, Claimants reassert the legal arguments put forward against Ocwen and GMACM on January 7, 2014 in the instant Response.

Further, the Order merely notes that the Claimants referenced the Consent Judgment between GMACM and the Justice Department. But it is important to document that this consent judgment resolves the claims of the United States and forty-nine other states, including New Jersey and New York, the location of the subject properties, as set forth in their complaint on March 12, 2012 (revised March 14, 2012), alleging that Residential Capital, LLC, Ally Financial, Inc., and GMAC Mortgage, LLC (collectively, "Defendant") violated, among other laws, the Unfair and Deceptive Acts and Practices laws of the Plaintiff States and settles claims for misconduct related to their origination and servicing of single family residential mortgages. (See attached). The Complaint itself states that Defendant GMACM, in the course of their origination of mortgage loans in the Plaintiff States, engaged in a pattern of unfair and deceptive practices. Among other consequences, these practices caused borrowers in the Plaintiff States to enter into unaffordable mortgage loans that led to increased foreclosures in the States. Under the circumstance, Claimants were the victims of one such unaffordable loan. Indeed, Claimants assert that the heightened pleading standards imposed by Rule 9(b) for fraud-based claims has been met in their submissions. Given the history of the Justice Department Complaint and the Consent Decree entered into by GMACM, it is disingenuous for GMACM to state that it has not

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<sup>3</sup> As an attorney, I have never before received a Motion to Dismiss the Complaint prior to receiving the courtesy (and right) of an Answer. I have also never been denied access to the "courthouse steps" in such a similar manner as Mr. Iqbal (See *Ascroft v. Iqbal*, 556 U.S. 662, 678 (2009)), nor I have I ever been denied access to discovery. The documents attached to the instant Response are copies of documents sent to GMACM that should still be resident in the corporate archives. The documents sent by the ResCap Trustee are woefully inadequate. **Yet, the Loan History provided by the Trustee for purposes of the instant Objection (See attached) provides the specific documentation alluded to within Claimant/Plaintiffs argument related to Count 3 of the original Complaint.** This denial of access to discovery has prejudiced Claimant/Plaintiffs' ability to prove the allegations made in their Complaint. Although, to date Ocwen and GMACM have yet to comply with their obligations to make initial disclosures pursuant to federal Rule of Civil Procedure 26(a)(1), Claimants assert that the documents attached to their submissions put forward enough evidence to support the claims made in the original Complaint and Claim No. 1466 and respectfully await the decisions of the Bankruptcy Court and Federal Court regarding the claims, amendments, and responses submitted thereto.

had fair notice of any allegation of fraud made against it by any and all borrowers in the Plaintiff States.

Significantly, the Consent Agreement Release also details the United States' civil claims based on the conduct of the banks in originating mortgage loans, such as the Long Beach Loan. This origination conduct includes deficiencies relating to "Valuing the properties used as collateral for such loans, including use of employee, independent and vendor management appraisers and alternative valuation methods such as AVMs and BPOs" and the "Advertising of loans and solicitation of borrowers" It is just this conduct that describes the Defendants' market manipulations resulting in inflated market values at the time of purchase as documented in the GMACM SmartWatch Report (See attached).<sup>4</sup>

Claimants have provided copious documents in conjunction with their obligations to make initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). These documents serve to detail the factual basis of Claimants' claims. On February 14, 2014, Claimants provided such documentation regarding their claims to BLANK ROME LLP, Michael P. Trainor, Esq. Attorneys for Defendants William C. Erbey, Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and GMAC Mortgage, LLC. Additionally, factual documentation was provided in answer to the Ocwen/GMACM Motions to Dismiss. (See attached) Unfortunately, because the attorney for Ocwen answered mistakenly on behalf of the Trust<sup>5</sup>, these documents seemingly were not conveyed to the Trust. This mistake should not be allowed to adversely affect Claimants' assertions. In all circumstances, they were under the impression that GMACM was adequately represented and properly responding to Claimant/Plaintiffs' motions.

The accompanying Briefs and Responses were not originally attached to Claimants' Response to the Sixty-First Objection because the facts did not concern the Freehold Property. Because the arguments presented relate specifically to the facts presented in the Sixty-Ninth Objection, the Response, dated January 7, 2014 is included and incorporated herein by reference. Because Counsel for Ocwen mistakenly argued on behalf of GMACM, their Brief and Reply are also attached. Pursuant to the Letter Order of the Hon. Tonianne Bongiovanni, dated May 20, 2014, these motions have been administratively terminated without prejudice. Accordingly, Claimant respectfully requests permission to file same with the Bankruptcy Court as these motions directly relate to Claim No. 1466<sup>6</sup>.

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<sup>4</sup> One could not just watch a few hours of television without being bombarded by the incessant commercials from DiTech (a subsidiary of GMACM) extolling the merits of purchasing property. In fact, if able to testify, I will state that it was just these commercials that significantly led to my decision to purchase the Long Beach Property. Proper Discovery would allow me to compare the timeline of these commercials with my buying decision. Since many other persons were also affected by this fraudulent advertising, housing prices were significantly overpriced. The smartwatch report itself states that the property appraised for \$390,000 at the time of purchase, and appreciated to \$422,000 in two short years. Unfortunately, I did try to list the property for such an inflated figure (See attached) but was unable to come close to that price. Included in my discovery submission is communication from my realtor that even before Superstorm Sandy the highest price possible was \$325,000 (that I was prepared to accept as of September 21, 2012, one month before the storm. So, yes, in good faith I believe I was caused to overpay and eventually suffer a loss by GMACM's wrongful conduct predating the bankruptcy.

<sup>5</sup> This mistake was not asserted against Claimant/Plaintiffs until May 19, 2014.

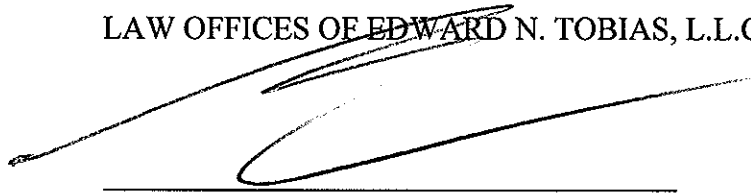
<sup>6</sup> Motions filed by counsel for Ocwen mistakenly included GMACM as co-movant. On May 19, 2014, substituted counsel for GMACM withdrew from all pending motions. Accordingly, attached exhibits are included only as background information the Court and not intended to assert any argument on behalf of GMACM.

For the purposes of stating a loss amount for the purposes of this claim only, I certify that the basis of the property, located at 93 Wisconsin Street, Long Beach, New York is approximately \$425,000.00 (including purchase price and improvements thereto). The highest offer made on the property prior to Superstorm Sandy was \$325,000.00 (See attached). Accordingly, Claim No. 1466 is amended to state a \$100,000.00 loss for the purposes of this Response to Omnibus Objection No. Sixty-Nine.<sup>7</sup>

For the reasons identified above, Edward N. Tobias and Suzanne M. Koegler request that the Bankruptcy Court grant Claimant(s) OBJECTION TO RESCAP BORROWERS CLAIMS TRUST'S SIXTY-NINTH OMNIBUS OBJECTION TO CLAIMS (NO LIABILITY BORROWER CLAIMS).

Respectfully submitted this 23rd day of July, 2014.

LAW OFFICES OF EDWARD N. TOBIAS, L.L.C.

A handwritten signature in black ink, appearing to be 'Edward N. Tobias', is written over a horizontal line.

By: Edward N. Tobias, Esq.

Dated: July 23, 2014

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<sup>7</sup> The October 9, 2013 sale price of \$210,000.00, together with the insurance recovery, to date, of \$100,189.55 equals a post-Sandy recovery of \$310,189.55, which approximates the pre-Sandy offer. Other losses related to the property are not included herein. For the purposes of this Submission only, Claimant will stipulate a loss of \$100,000.00

**Law Offices of Edward N. Tobias, L.L.C.**

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[www.tobiaslaw.com](http://www.tobiaslaw.com)

January 7, 2014

Hon. Joel A. Pisano  
Clarkson S. Fisher U.S. Courthouse  
402 East State Street  
Room 2020  
Trenton, NJ 08608

Filed Electronically

Re: Tobias v. USA, et al.  
Civil Action No.: 3:13-cv-06471-JAP-TJB

INCORPORATED  
BY  
REFERENCE

Dear Judge Pisano:

This office, representing the Plaintiffs, Edward N. Tobias, pro se, and Suzanne M. Koegler, in the above matter, is in receipt of Defendants' William C. Erbey, Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and GMAC Mortgage, LLC (the "Moving Defendants") Motion to Dismiss Plaintiffs' Claims or, in the alternative, Motion for More Definite Statement in the above-referenced matter. Please consider this letter-brief in lieu of a more formal response to Moving Defendants' Motion.

**Preliminary Statement**

The Complaint in this matter, albeit "poorly constructed" as characterized by Defendants' attorney, does state numerous factual allegations regarding the events leading to Plaintiffs' loss for which they are seeking redress. An Answer to the Complaint and Discovery are necessary to determine the evidentiary basis to support Plaintiffs' allegations. Counts 2, 3, and 4 are hereby amended to provide additional factual

allegations and more specific legal theory for relief. Documentation not attached to the original Complaint, (e.g. matters of public record and documents hereby certified to be authentic by the Plaintiff (See *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3rd Cir. 1993))) is provided to assist the Court in its limited review of this Rule 12(b)(6) motion. Such documentation of these factual allegations is sufficient to meet the standard to survive a motion under Rule 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Count 2:

By way of further factual information to the Court, the substance of which should be also known by the moving defendants through a review of their corporate records, the property was purchased by the plaintiffs on September 2, 2005 for a price of \$386,000.00; a purchase money mortgage and note were given to GMAC Mortgage, LLC. In the amount of \$299,000.00, with the amount of \$87,000.00 paid as down payment by the Plaintiffs. According to Defendant GMAC Mortgage, LLC, the original appraised home value was \$390,000.00 and, as of October 2, 2007, was purported to have an estimated value of \$422,000.00 with a total estimated equity of \$130,957.00. (See Ex. A). The purpose of this document was plainly to induce Plaintiffs to enter into further transactions with Defendant, whether to refinance, increase the outstanding loan, or utilize the available stated equity to borrow additional money from Defendant, based on the fraudulent valuation stated. Upon review of the attached correspondence between Plaintiffs and the Moving Defendants, coupled with the myriad litigation and public records surrounding the events leading to the recent mortgage crisis, it is disingenuous of the Moving Defendants to claim to be unaware of what obligations they owe to Plaintiffs

and where those obligations derive from. Whether they wrongfully failed to meet these obligations is for the finder of fact to decide. Plaintiffs were damaged by Defendants' market manipulations resulting in inflated market values at the time of purchase. The ongoing fraud upon the market, eventually led to Plaintiffs' total loss of their investment in the property. Accordingly, Count 2 of the Complaint is more specifically plead as requesting relief against Defendant, GMAC Mortgage, LLC on the basis of fraud, whether by common law, state law, or federal law as discovery in this matter should evidence.

Count 3:

Prior to the instant litigation, GMAC Mortgage, LLC declared bankruptcy and its assets held by Residential Capital, LLC (ResCap Bankruptcy). At the time of the bankruptcy of GMAC Mortgage, LLC, this entity owned two loans related to Plaintiffs' properties at 75 Princeton Oval, Freehold, NJ and 93 Wisconsin St., Long Beach, NY. On information and belief, a portion of the assets owned by GMAC Mortgage, LLC and held by Residential Capital, LLC, including the loan related to 93 Wisconsin St., were purchased by Ocwen Financial Corporation and/or Ocwen Loan Servicing, LLC (Ocwen). (See Ex. B). On information and belief, a portion of the assets owned by GMAC Mortgage, LLC and held by Residential Capital, LLC including the loan related to 75 Princeton Oval, were purchased by Greentree Servicing, LLC. Plaintiffs had diligently paid the monthly mortgage payments on each property until such time as Plaintiffs requested from GMAC Mortgage, LLC a forbearance of the 93 Wisconsin St. loan based on the events of Superstorm Sandy. Notwithstanding the diligent repayment of this loan by Plaintiffs, upon information and belief, Plaintiffs allege that GMAC



Mortgage, LLC fraudulently mischaracterized the 93 Wisconsin St. loan as non-performing such that Ocwen may have been able to purchase this loan at an unfair discount resulting in an improper windfall for this Defendant during the short time this loan was held by Ocwen. Further discovery is necessary in order to determine the basis on which these two loans were separated to be sold to two different purchasers, whether Ocwen, as a sophisticated entity specializing in such transactions, was aware of such fraudulent or otherwise wrongful acts, and if this separation resulted in damage to Plaintiffs, either in their role as borrower homeowners, or as shareholders of GM in bankruptcy, which had an ownership interest in Defendant GMAC Mortgage, LLC. Additionally, a duty to safeguard the funds paid by Plaintiffs in full satisfaction of the loan on 93 Wisconsin St. to the extent that Plaintiffs are entitled to a refund thereof on the basis of Defendants' wrongful acts.

Subsequently, based on the substantially diminished value of the property, Plaintiffs requested and returned a "Borrowers Response Package" requesting a possible short sale and loan modification review. (See Ex. C without confidential financial information originally attached). Plaintiffs never received a response from GMAC Mortgage, LLC and instead found that this loan had been sold to Ocwen. Ocwen was notified of the Borrowers Response Package to GMAC Mortgage, LLC. requesting loan modification (See Ex. D); however Ocwen took no further action regarding this request until Plaintiffs were notified that, according to Ocwen, the "Modification [was] terminated per customer's request". (See Ex. E). Plaintiffs deny that they requested this termination. Complaints regarding wrongful denials of loan modification requests are administered by the New York State Banking Department, which mandates that the

"Servicer has a duty of good faith and fair dealing in its communications, transactions, and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan." NYS Banking Law Article 12-D: Business Conduct Rules for Mortgage Loan Servicers (Part 419.2). Defendants' obligations to third parties under Home Affordable Modification Program (HAMP) and the Home Affordable Refinance Program (HARP) (authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, which has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009 (collectively "The Acts") are unsettled. Accordingly, Count 3 is more specifically plead as requesting relief against the Moving Defendants under NYS Banking Law and HAMP and HARP to the extent Defendant owes duties to third parties such as Plaintiffs.

#### Count 4

With regard to Count 4 of the Complaint, attached please find Plaintiffs' letters to Defendant, dated April 25, 2013 and May 20, 2013. (See Ex. F and Ex. G). These documents state the basis of Plaintiffs contractual dispute with defendant, Ocwen Loan Servicing, LLC regarding their obligations according to the terms of the mortgage contract. Defendants breached the mortgage terms by wrongfully withholding application of the insurance proceeds to principal repayment such that Plaintiffs could proceed with appropriate disposition of the property. Documents already in the possession of Defendants will also show that the payments in forbearance were paid in a timely manner (See Ex. H advising that any unpaid amount is due at the end of the forbearance period) and this loan was paid in full upon sale of the property in its damaged "as is" condition. Upon the lump sum payment of the outstanding mortgage payments in forbearance and

notification that a contract for sale had finally been signed that could pay off the loan (See Ex. I), Defendant Ocwen determined that this "Borrower is no longer interested in a short sale." (See Ex. J). In reviewing the history of the real estate market in Long Beach, NY, it is apparent that Defendants unreasonable delay in responding to Plaintiffs' request for short sale was only fortuitously mitigated by a market rebound lasting an agonizing nine months. Accordingly, Count 3 of the Complaint is more specifically plead as requesting relief against Defendants, GMAC Mortgage, LLC and Ocwen on the basis of breach of contract and tortious interference with contract as discovery in this matter should evidence.

#### Legal Argument and Conclusion

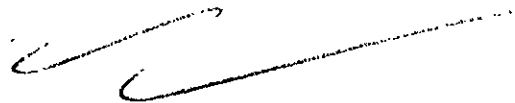
A motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all well pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief. *Bartholomew v. Fischl*, 782 F.2d 1148, 1152 (3rd Cir.1986). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974). See also *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434-35 (3d Cir. 1997). The parties have not yet had the opportunity to exchange discovery in this matter and Plaintiffs strongly deny that this litigation was commenced frivolously or for any purpose of a "fishing expedition." As homeowners with a verifiable loss from this real estate transaction, Plaintiffs are entitled to reasonably investigate the role Defendants played in this loss. My review of public records available related to the Moving Defendants" and allegations made by others in ongoing litigation are the initial basis for my assertion that

they engaged in illegal or other adverse actions that resulted in an untrue and inaccurate value for the property located at 93 Wisconsin St., Long Beach, NY and the subsequent financial loss suffered by the Plaintiffs when faced with the unfortunate circumstances of Superstorm Sandy. Ocwen's own letterhead states "Helping Homeowners is What We Do!" The delay and obfuscation engaged in by Ocwen has done little to help the homeowners in this instant matter. An Answer to the Complaint and further discovery is necessary to substantiate further legal theory or theories under which Plaintiffs are entitled to relief.

For the foregoing reasons, Plaintiffs respectfully requests that the present motion be denied and that Moving Defendants' provide an Answer to Plaintiffs' Complaint.

Respectfully Submitted,

LAW OFFICES OF EDWARD N. TOBIAS, L.L.C.



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By: Edward N. Tobias, Esq.

Dated: January 7, 2014

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

In re:

RESIDENTIAL CAPITAL, LLC, *et al.*

Debtors.

**NOT FOR PUBLICATION**

Case No. 12-12020 (MG)

Jointly Administered

**MEMORANDUM OPINION AND ORDER SUSTAINING OBJECTION TO  
CLAIM NO. 1467 OF SUZANNE KOEGLER AND EDWARD TOBIAS**

***A P P E A R A N C E S:***

**MORRISON & FOERSTER LLP**

*Counsel for the ResCap Borrower Claims Trust*

250 West 55th Street

New York, NY 10019

By: Jordan A. Wishnew, Esq.

**LAW OFFICES OF EDWARD N. TOBIAS, LLC**

*Counsel for Edward N. Tobias and Suzanne Koegler*

226 Richwood Road

Mullica Hill, New Jersey 08062

By: Edward N. Tobias, Esq.

**MARTIN GLENN**

**UNITED STATES BANKRUPTCY JUDGE**

Suzanne Koegler and Edward Tobias (together, the “Claimants”) filed claim number 1467 (the “Freehold Claim”) against Debtor Residential Capital, LLC (“ResCap”), asserting a general unsecured claim in the amount of \$1,000,000. The Freehold Claim stems from alleged damage caused by Hurricane Sandy to real property located at 75 Princeton Oval, Freehold, NJ, 07728 (the “Freehold Property”). In a complaint (the “Complaint,” ECF Doc. # 6881-1 Ex. A) filed in the United States District Court for the District of New Jersey (the “District Court”), the Claimants assert that ResCap and Debtor GMAC Mortgage, LLC (“GMACM”) (1) manipulated the national housing market and (2) failed to adequately compensate the Claimants for Sandy-related damages.

Before the Court is the *ResCap Borrower Claims Trust's Sixty-First Omnibus Objection to Claims (No Liability Borrower Claims)* (the "Objection," ECF Doc. # 6777). The ResCap Borrower Claims Trust (the "Trust") seeks an order disallowing and expunging the Freehold Claim.<sup>1</sup> In support of the Objection, the Trust submitted the Declarations of Deanna Horst (Obj. Ex. 1) and Norman Rosenbaum (Obj. Ex. 2). The Claimants filed a response (the "Response," ECF Doc. # 6881), and the Trust submitted a reply (the "Reply," ECF Doc. # 7003), supported by a supplemental Declaration of Deanna Horst (the "Supp. Horst Decl.," ECF Doc. # 7003-1). The Court held a hearing on May 29, 2014, and Tobias appeared telephonically.

As explained below, the facts asserted in the Complaint—which was filed against the Debtors in violation of the automatic stay—are insufficiently pled to form the basis for a claim against ResCap. For that reason, the Objection is **SUSTAINED** and the Freehold Claim is **EXPUNGED**.

## I. BACKGROUND

On May 14, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On December 11, 2013, the Court entered an order (ECF Doc. # 6065) confirming the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the "Plan," ECF Doc. # 6065-1). The Plan became effective on December 17, 2013 (the "Effective Date"). (ECF Doc. # 6137.)

On March 21, 2013, the Court entered an order (the "Procedures Order, ECF Doc. # 3294) authorizing the Debtors to file omnibus objections on various grounds, including additional grounds from those set forth in Bankruptcy Rule 3007(d). The Procedures Order

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<sup>1</sup> The Court previously entered a separate order granting the Objection as to certain other claims. (ECF Doc. # 7015.)

included specific protections for Borrowers,<sup>2</sup> and established a process for the Debtors (and now the Trust) to follow before objecting to certain categories of Borrowers' claims. For example, before objecting to certain Borrower claims, the Trust must send the Borrower a letter (a "Request Letter") requesting additional documentation in support of the Borrower's claim. (*See* Procedures Order at 3–4).

On October 22, 2012, the Claimants timely filed two general unsecured claims, each in the amount of \$1,000,000: Claim No. 1466 against GMACM and Claim No. 1467 against ResCap. The claims relate to two different properties,<sup>3</sup> but the stated basis for both claims is identical: "Damages based on Consumer Fraud or other claim/affirmative defenses to foreclosure requesting monetary relief." In Box 8 of each proof of claim form—which requires the claimant to attach any documents in support of the claim—the Claimants wrote: "Complaint has not yet been filed." Nothing was attached to either proof of claim.

Only the Freehold Claim is subject to the current Objection. In connection with the Freehold Property, on May 9, 2003, GMAC Mortgage Corp., n/k/a GMACM originated a \$320,000 loan to the Claimants (the "Loan"). (*See* Supp. Horst Decl. ¶ 12.) GMACM transferred its interest in the Loan to Fannie Mae in or around June 2003, but continued as servicer of the Loan. (*Id.*) GMACM serviced the Loan until servicing was transferred to Green Tree Servicing on February 1, 2013. (*Id.*) The Trust asserts that the Claimants never disputed the terms of the Loan with GMACM before filing the Freehold Claim. (*See id.* ¶ 13.) According

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<sup>2</sup> As used in the Procedures Order, the term "Borrower" is defined as "a person who is or was a mortgagor under a mortgage loan originated, serviced, and/or purchased or sold by one or more of the Debtors." (*See* ECF Doc. # 3123 ¶ 21.)

<sup>3</sup> As stated in the text above, Claim No. 1467 relates to the Freehold Property. Claim No. 1466 relates to real property located at 93 Wisconsin Street, Long Beach, N.Y. 11561 (the "Long Beach Property").

to the Debtors' servicing notes for the Loan, the Loan was never referred to foreclosure, and the only delinquency ever reported on the account was a 30-day late payment in 2004. (*See id.*)

On May 4, 2013, the Debtors sent a Request Letter to the Claimants requesting additional information in support of their claims. The Claimants responded by stating that they had yet to file the complaint that would form the basis of their claims. (*See* Reply Ex. B-2.) The Claimants' response to the Request Letter also attached copies of two "representative cases" and made reference to a consent judgment between GMACM and the Justice Department. (*Id.*)

On October 28, 2013, the Claimants commenced Civil Action No. 3:13-cv-6471 (JAP)(TJP) (the "District Court Action") by filing the Complaint in the District Court. The Complaint names as defendants Debtors GMACM and ResCap (in spite of the automatic stay), along with numerous non-debtors, including the United States of America, Barack Obama, and various state and federal agencies. The Complaint relates to three properties that are or were owned by the Claimants and that were allegedly damaged by Hurricane Sandy. The gravamen of the claims against the various state and federal agencies is that the Claimants should be entitled to relief funds for Sandy-related damage to their properties. A separate claim against GMACM, ResCap, Ocwen Loan Servicing ("Ocwen"), and others alleges that these "defendants wrongfully engaged in illegal or other adverse actions that negatively affected the nationwide real estate market resulting in untrue and inaccurate property values at the time the plaintiffs purchased the properties." (Compl. at 18.) The Complaint further alleges that the Claimants requested assistance from these defendants following Hurricane Sandy and that the defendants failed "to adequately compensate plaintiffs for damages sustained as a result of their wrongful acts." (*Id.* at 19.) According to the Complaint, the defendants were required to provide assistance to the Claimants under the terms of the Claimants' mortgages and under federal law. The Claimants



allege that they sustained a loss when they sold the Long Beach Property—the property referenced in Claim No. 1466, which is not subject to this Objection. But the Complaint states that the Claimants have not sold the Freehold Property, so they do not know whether they will sustain a loss on that Property. (*Id.*)

The Trust asserts that GMACM was never served with the Complaint.<sup>4</sup> (Reply at 6 n.9.) Nevertheless, Ocwen, also a defendant in the District Court Action, entered a notice of appearance for GMACM in late 2013 and included GMACM in its motion to dismiss, filed on December 26, 2013.<sup>5</sup> The Trust asserts that Ocwen mistakenly entered an appearance for GMACM, and the Trust retained separate counsel once it learned of the mistake. On May 19, 2014, GMACM filed a Notice of Bankruptcy in the District Court. (Dist. Ct. Action, ECF Doc. # 60.)

On April 16, 2014, the Claimants filed in the District Court a motion for leave to amend their Complaint to add specificity to their allegations. (*Id.*, ECF Doc. # 54.) On May 5, 2014, certain defendants filed an opposition to that motion. (*Id.*, ECF Doc. ## 55, 56.) The Claimants' motion to amend remains pending, and the District Court entered an order terminating all pending motions to dismiss until it rules on the Claimants' motion to amend. (*Id.*, ECF Doc. # 62.)

On April 11, 2014, the Trust filed the Objection to the Freehold Claim as a general no liability claim, classifying the Claim as one for wrongful foreclosure. (*See* Obj. Ex. A at 28.) The Trust explained that a review of the Debtors' records showed that the Debtors no longer held

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<sup>4</sup> According to the Trust, the summons in the District Court Action was issued to GMACM c/o Morrison & Foerster, LLP ("MoFo"), but the attached proof of service is blank, and Tobias provided no other support that either GMACM or MoFo was actually served.

<sup>5</sup> Ocwen is currently servicing a loan originated in connection with the Long Beach Property, which was previously serviced by GMACM. That loan forms the basis for Claim No. 1466 and is not subject to this Objection.

any interest in the Loan and that the Loan had never been the subject of a dispute or foreclosure proceeding.

The Claimants then filed the Response, to which they attached the District Court Complaint. According to the Claimants, the Complaint sets forth the basis for the amount of their claims. (Response ¶ 2.) The Claimants assert that the Trust's Objection is premature because the underlying issues in the Complaint have not yet been adjudicated. According to the Claimants, the Trust's determination that ResCap has no liability for the amount of the Freehold Claim is unfounded until there is a final disposition by the District Court and/or this Court.

In the Reply, the Trust argues that the District Court Action was commenced in violation of the automatic stay and is therefore void as to the Debtors. The Trust also points out that the Claimants never sought leave to amend the Freehold Claim to incorporate the Complaint. Additionally, the Trust asserts that the Claimants have failed to carry their burden of proving the validity of their Claim since the Complaint contains only vague, conclusory allegations.

## II. DISCUSSION

Claims objections have a shifting burden of proof. Correctly filed proofs of claim "constitute prima facie evidence of the validity and amount of the claim . . . . To overcome this prima facie evidence, an objecting party must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim." *Sherman v. Novak (In re Reilly)*, 245 B.R. 768, 773 (2d Cir. B.A.P. 2000). By producing "evidence equal in force to the prima facie case," an objector can negate a claim's presumptive legal validity, thereby shifting the burden back to the claimant to "prove by a preponderance of the evidence that under applicable law the claim should be allowed." *Creamer v. Motors Liquidation Co. GUC Trust (In re Motors Liquidation Co.)*, No. 12 Civ. 6074 (RJS), 2013 U.S. Dist. LEXIS 143957, at \*12-13

(S.D.N.Y. Sept. 26, 2013) (internal quotation marks omitted). If the objector does not “introduce[] evidence as to the invalidity of the claim or the excessiveness of its amount, the claimant need offer no further proof of the merits of the claim.” 4 COLLIER ON BANKRUPTCY ¶ 502.02 (16th rev. ed. 2013).

Several courts, including those in this district, have applied the federal pleading standards when assessing the validity of a proof of claim. *See, e.g., In re DJK Residential LLC*, 416 B.R. 100, 106 (Bankr. S.D.N.Y. 2009) (“In determining whether a party has met their burden in connection with a proof of claim, bankruptcy courts have looked to the pleading requirements set forth in the Federal Rules of Civil Procedure.” (citations omitted)). Thus, to the extent the Complaint provides the basis for the Freehold Claims, it must satisfy the federal pleading requirements.<sup>6</sup> It does not.

Pursuant to Federal Rule of Civil Procedure 8(a)(2), a “pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Rule 8(a) “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ascroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). While a claim “does not need detailed factual allegations, . . . [it] requires more than labels and conclusions . . . .” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The Claimant must assert ‘enough facts to state a claim to relief that is plausible on its face.’” *DJK Residential*, 416 B.R. at 106 (quoting *Twombly*, 550 U.S. at 570). “To show facial plausibility, the Claimant must plead ‘factual content that allows the court to draw the reasonable

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<sup>6</sup> For purposes of this Opinion, it is unnecessary for the Court to address the Claimants’ failure to file the Complaint until more than a year after they filed the Freehold Claim, or that the District Court Action—commenced more than seventeen months after the Petition Date—was filed against the Debtors in clear violation of the automatic stay.

inference that the [Debtor] is liable for the misconduct alleged.” *Id.* (quoting *Iqbal*, 556 U.S. at 678).

Rule 9(b) imposes heightened pleading standards for fraud-based claims. Pursuant to Rule 9(b), “a party must state with particularity the circumstances constituting fraud or mistake” if making allegations of fraud. FED. R. CIV. P. 9(b). “In order to meet the ‘particularity’ requirement of Rule 9(b), a plaintiff [must] allege the time, place, and content of the alleged misrepresentations on which he or she relied; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud.” *Ind. State Dist. Council of Laborers & HOD Carriers Pension & Welfare Fund v. Omnicare, Inc.*, 719 F.3d 498, 503 (6th Cir. 2013) (alteration in original) (internal quotation marks omitted). “The purpose of Rule 9(b) is to provide fair notice to the defendant so as to allow him to prepare an informed pleading responsive to the specific allegations of fraud.” *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass’n*, 176 F.3d 315, 322 (6th Cir. 1999).

The vague, conclusory allegations contained in the Complaint are insufficient to state a claim against ResCap that is plausible on its face, and the Complaint therefore fails to satisfy even the more relaxed pleading standards of Rule 8(a)(2). *See Twombly*, 550 U.S. at 570. For example, the Complaint alleges that “defendants” engaged in “illegal or other adverse actions that negatively affected the nationwide real estate market.” (Compl. at 18.) The Complaint does not state whether any Debtor entity engaged in this alleged conduct, nor does it even describe the nature of the purported illegal conduct. Additionally, the Complaint alleges that the Claimants contacted “defendants” and requested assistance after Hurricane Sandy, to no avail. Again, the Complaint does not specify *which* defendants the Claimants contacted and fails to identify the basis for any obligation on the part of the defendants to provide assistance to the Claimants. The

Trust asserts that it reviewed the Debtors' books and records and could not find any instance where the Claimants contacted the Debtors regarding a loan modification or any other loss mitigation option due to Hurricane Sandy. (Reply ¶ 29.) The Trust notes that a hold was placed on the Claimants' account on November 11, 2012, to bypass late charges for the months of November, December, and January, due to Hurricane Sandy. (*Id.* at 13 n.10.) But the Trust asserts that this was done as a matter of course for all homeowners that were in a FEMA-declared disaster area and was not the result of any contact between the Claimants and the Debtors. (*Id.*)

To pursue a claim against any of the Debtors, Tobias (who is a lawyer) was required to state a plausible claim for relief *in this Court*, not in the District Court Action filed against the Debtors in violation of the automatic stay. The vague, conclusory allegations contained in the Complaint—on which Tobias now relies to support his claim—do not permit the Court to draw a reasonable inference that ResCap is liable for the alleged misconduct.

The Claimants had a chance to provide factual support for the claim they asserted here, and they failed to do so in their response to the Objection. Additionally, during the hearing on May 29, 2014, the Court questioned Tobias, giving him another opportunity to elaborate on the basis of the purported claim. If anything, Tobias' "explanation" further confirms that there is no basis in fact or law supporting the claim. Tobias asserted that the Debtors' *lending practices*—GMACM originated the Claimants' \$320,000 Loan on the Freehold Property but did not sell them the Property—somehow drove up the market prices of all New Jersey shore real estate, causing Claimants to "overpay" for the Property. After Hurricane Sandy, market prices declined, thereby "causing" Claimants to lose money. Tobias argues that the Debtors should pay him

damages for the decline in the market price of the Property (which has not, in any event, been sold). To say the least, this is *not* a plausible claim for relief.

The Claimants have failed to carry their burden of proving the validity of the Freehold Claim. The fact that the Claimants have a pending motion to amend their Complaint in the District Court does not alter this analysis.

### **III. CONCLUSION**

For all of the foregoing reasons, the Objection is **SUSTAINED**, and claim number 1467 is hereby disallowed and expunged.

**IT IS SO ORDERED.**

Dated: June 5, 2013  
New York, New York

*Martin Glenn*  
MARTIN GLENN  
United States Bankruptcy Judge

Account Number	Trans Added Date	Date Interest Paid Current	Pmt Bal after Trans	Transaction Description	Transaction Reason Code	Trans Type	Teller ID	Trans Amount	To Principal	To Interest Amt	To Escrow Amt	To Fee Amt	To Unapplied Funds Amt	To Credit Insurance Amt	To Late Charge Amt
0685287393	10/15/2004	09/01/2004	\$300,316.63	Escrow Disb-Tax City		PR1	20001	(\$3,583.79)	(\$1,300.32)	(\$1,188.75)	(\$1,094.72)	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	10/15/2004	10/01/2004	\$298,016.31	PAYMENT		E91	32867	(\$3,583.79)	\$0.00	\$0.00	(\$3,582.79)	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	10/01/2004	10/01/2004	\$298,016.31	PAYMENT		AP	00099	\$3,583.79	\$1,300.32	\$1,188.75	\$1,094.72	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	09/01/2004	09/01/2004	\$300,316.63	PAYMENT		AP	00099	\$3,583.79	\$1,295.19	\$1,183.88	\$1,094.72	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	08/01/2004	08/01/2004	\$301,611.82	PAYMENT		AP	00099	\$3,583.79	\$1,290.08	\$1,198.89	\$1,094.72	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	07/28/2004	07/01/2004	\$302,901.90	Escrow Disb-Tax City		E91	32074	(\$3,019.82)	\$0.00	\$0.00	(\$3,019.82)	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	05/28/2004	07/01/2004	\$302,901.90	PAYMENT		AP	00001	\$3,583.79	\$1,285.00	\$1,204.07	\$1,094.72	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	05/06/2004	05/01/2004	\$305,900.46	PAYMENT		AP	00001	\$3,583.79	\$1,273.17	\$1,215.80	\$1,094.72	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	05/06/2004	06/01/2004	\$304,186.90	Curatment		CMA	00001	\$435.35	\$435.35	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	05/06/2004	06/01/2004	\$304,622.25	PAYMENT		AP	00001	\$3,583.79	\$1,278.21	\$1,210.86	\$1,094.72	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	04/30/2004	03/01/2004	\$308,441.76	PAYMENT		AP	00802	\$3,583.79	\$1,263.15	\$1,225.82	\$1,094.72	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	04/30/2004	03/01/2004	\$0.00	Unapplied		UI	00802	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	(\$124.45)
0685287393	04/30/2004	04/01/2004	\$307,173.63	PAYMENT		AP	00802	\$435.35	\$1,288.15	\$1,220.82	\$1,094.72	\$0.00	\$0.00	\$0.00	\$248.90
0685287393	04/30/2004	04/01/2004	\$0.00	PREPAY PENALTY	098	PWC	00802	\$16.00	\$0.00	\$0.00	\$0.00	\$16.00	\$0.00	\$0.00	\$0.00
0685287393	04/30/2004	04/01/2004	\$0.00	Unapplied		UFU	00802	(\$3,397.34)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	04/26/2004	02/01/2004	\$309,704.93	Escrow Disb-Fire		E20	32022	(\$768.00)	\$0.00	\$0.00	(\$768.00)	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	04/09/2004	02/01/2004	\$309,704.93	Escrow Disb-Tax City		E91	32074	(\$2,743.79)	\$0.00	\$0.00	(\$2,743.79)	\$0.00	\$0.00	\$0.00	\$0.00
0685287393	02/05/2004	02/01/2004	\$309,704.93	PAYMENT		SRA	00001	\$3,397.34	\$0.00	\$0.00	\$0.00	\$0.00	\$3,397.34	\$0.00	\$0.00
0685287393	02/05/2004	02/01/2004	\$0.00	Unapplied		UFU	00001	\$3,397.34	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
0685287393	12/20/2013	03/18/2013	UI	added litigation codes per Legal Manager	ALEXANDRA FECHT
0685287393	02/14/2013	02/14/2013	CBR	SERVICE RELEASE: EFFECTIVE DATE =02/01/13	SYSTEM ID
0685287393	01/16/2013	01/16/2013	D28	BILLING STATEMENT FROM REPORT R828	SYSTEM ID
0685287393	01/10/2013	01/10/2013	CBR	CURRENT: < 30 DAYS	SYSTEM ID
0685287393	01/07/2013	01/07/2013	DNM	EARLY IND: SCORE 099 MODEL E116C	SYSTEM ID
0685287393	12/18/2012	12/18/2012	928	BILLING STATEMENT FROM REPORT R828	SYSTEM ID
0685287393	12/14/2012	12/14/2012	CBR	CURRENT: < 30 DAYS	SYSTEM ID
0685287393	12/05/2012	12/05/2012	DNM	EARLY IND: SCORE 099 MODEL E116C	SYSTEM ID

Rescap HistoriesA.rpt

Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
0685287393		11/27/2012	DM	REPORT HOLD REMOVED FROM REPORT R628	JAYSON DELEON
0685287393		11/16/2012	DM	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393	CSH	11/15/2012	NT	"Late Charges Bypassed November 2012, December 2012, and January 2013 due to Hurricane Sandy"	API CSRV
0685287393	CSH	11/15/2012	NT	CURRENT - 30 DAYS	API CSRV
0685287393		11/09/2012	DM	EARLY IND: SCORE 099 MODEL E116C	SYSTEM ID
0685287393	DIS	11/01/2012	NT	FEMA declaration due to Hurricane Sandy.	API CSRV
0685287393	DIS	11/01/2012	NT	Individual assistance declared on 10/30/12.	API CSRV
0685287393	DIS	11/01/2012	DM	BREACH HOLD PLACED-EXPIRATION DATE 01/01/13	API CSRV
0685287393		10/16/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		10/05/2012	DM	EARLY IND: SCORE 067 MODEL E116C	SYSTEM ID
0685287393		09/18/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		09/05/2012	DM	EARLY IND: SCORE 067 MODEL E116C	SYSTEM ID
0685287393		08/16/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		08/07/2012	DM	EARLY IND: SCORE 067 MODEL E116C	SYSTEM ID
0685287393		07/17/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		07/05/2012	DM	EARLY IND: SCORE 069 MODEL E116C	SYSTEM ID
0685287393		06/18/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		06/12/2012	DM	BREACH HOLD PLACED-EXPIRATION DATE 08/30/12	LORI HILMER
0685287393		06/05/2012	DM	EARLY IND: SCORE 069 MODEL E116C	SYSTEM ID
0685287393		05/16/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		05/07/2012	DM	EARLY IND: SCORE 069 MODEL E116C	SYSTEM ID
0685287393		04/17/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		04/05/2012	DM	EARLY IND: SCORE 069 MODEL E116C	SYSTEM ID
0685287393		03/16/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		03/06/2012	DM	EARLY IND: SCORE 069 MODEL E116C	SYSTEM ID
0685287393		02/16/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		02/07/2012	DM	EARLY IND: SCORE 069 MODEL E116C	SYSTEM ID
0685287393		01/17/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393		01/05/2012	DM	EARLY IND: SCORE 069 MODEL E116C	SYSTEM ID
0685287393		12/16/2011	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685287393	DIS	12/13/2011	NT	FEMA moratorium has expired.	DAVID NISSEN
0685287393	DIS	12/13/2011	NT	Disaster coding being removed.	DAVID NISSEN
0685287393		12/06/2011	DM	EARLY IND: SCORE 069 MODEL E116C	SYSTEM ID
0685287393		11/16/2011	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID

arch 6/2014

Rescap Historied,rep



Loan History

0685483862	07/03/2006		\$295,964.74	PAYMENT	AP	\$2,278.40	\$339.63	\$1,358.06	\$581.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	06/01/2006		\$296,304.37	PAYMENT	AP	\$2,278.40	\$338.08	\$1,359.61	\$581.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	05/01/2006		\$296,642.45	PAYMENT	AP	\$2,278.40	\$336.54	\$1,361.15	\$581.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	04/18/2006		\$296,978.99	Escrow Ddb-Tax School	ES3	(\$1,677.43)	\$0.00	\$0.00	(\$1,677.43)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Date Data as of:

Account Number	Trans Added Date	Date Interest Paid Current	Ptn Bal after trans	Transaction Description	Transaction Reason Code	Trans Type	Trans Amount	To Principal	To Interest Amt	To Escrow Amt	To Fee Amt	To Unapplied Funds Amt	To Insurance Amt	To Credit Amt	To Late Charge Amt
0685483862	04/03/2006	04/01/2006	\$296,978.99	PAYMENT		AP	\$2,278.40	\$336.00	\$1,362.69	\$581.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	03/01/2006	03/01/2006	\$297,313.99	PAYMENT		AP	\$2,278.40	\$333.47	\$1,364.22	\$581.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	02/01/2006	02/01/2006	\$297,647.46	PAYMENT		AP	\$2,278.40	\$331.85	\$1,365.74	\$581.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	01/18/2006	01/01/2006	\$297,979.41	Escrow Ddb-Tax County		E90	(\$360.49)	\$0.00	\$0.00	(\$360.49)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	01/04/2006	01/01/2006	\$297,979.41	Escrow Ddb-Tax City		E91	(\$872.76)	\$0.00	\$0.00	(\$872.76)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	12/16/2005	12/01/2005	\$298,309.85	Escrow Refund-Tax School		R93	\$1,677.44	\$0.00	\$0.00	\$1,677.44	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	12/01/2005	12/01/2005	\$298,309.85	PAYMENT		AP	\$2,278.40	\$328.83	\$1,368.76	\$581.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	10/20/2005	10/01/2005	\$298,638.78	Curriculum		CTB	(\$33.95)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	10/20/2005	10/01/2005	\$298,638.78	Curriculum		CTT	\$33.95	\$33.95	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	10/20/2005	10/01/2005	\$298,638.78	Escrow Ddb-Tax School		E93	(\$1,677.44)	\$0.00	\$0.00	(\$1,677.44)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	10/20/2005	10/01/2005	\$298,638.78	Curriculum		CTA	\$33.95	\$33.95	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	09/22/2005	11/01/2005	\$298,638.78	Curriculum		PT	\$3,442.84	\$327.27	\$1,370.42	\$1,745.15	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	09/13/2005	10/01/2005	\$299,000.00	PAYMENT		AP	\$2,278.40	\$327.27	\$1,370.42	\$581.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	09/13/2005	10/01/2005	\$299,000.00	PAYMENT		PT	\$1,163.44	\$0.00	\$0.00	\$1,163.44	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	08/09/2005	10/01/2005	\$299,000.00	PAYMENT		RT	(\$1,163.44)	\$0.00	\$0.00	(\$1,163.44)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0685483862	08/09/2005	10/01/2005	\$299,000.00	PAYMENT		SR	\$1,163.44	\$0.00	\$0.00	\$1,163.44	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Comments:

Transaction's Account Number	Trans Added Date	Trans Type	Transaction Message	Trans User Name
0685483862	02/15/2013	CIT	004 DONE 02/15/13 BY TLR 05023	AMBER KELLER
0685483862	02/15/2013	CIT	TSK TYP 428-DISASTER FORBEA	AMBER KELLER
0685483862	02/15/2013	CIT	004 Closing CIT 428, opened CIT 586	AMBER KELLER
0685483862	02/15/2013	CIT	005 Open CIT 586, Disaster Forbearance callback.	AMBER KELLER
0685483862	02/15/2013	CIT	Possible forbearance extension.	AMBER KELLER
0685483862	02/15/2013	NT	sent EPBO to Amy Brune-corelogic;	LYNN HEFFER
0685483862	02/15/2013	NT	1 VNN HEFFER	LYNN HEFFER

July 14, 2014

Loan History Acct with comments and Date Prompt No CLA rep

# Loan History

Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
0685483862	HAZ	02/15/2013	NT	ICCQBEE/239797 User Notes	BALBOA API ID
0685483862	HAZ	02/15/2013	NT	Bsellers re research ELRT 10080543 del 12/1/12	BALBOA API ID
0685483862	HAZ	02/15/2013	NT	Counselor Code is not Balboa. Determine if we should monitor this loss or not. Counselor Code	BALBOA API ID
0685483862	HAZ	02/15/2013	NT		BALBOA API ID

Date Data as of:

Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
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0685483862	HAZ	02/15/2013	NT	:XXX Set cc to BAL, updated info, action complete	BALBOA API ID
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0685483862	COL09	02/15/2013	CIT	004 New CIT 428 - info modified for review.	RYAN LOOBY
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0685483862	HAZ	02/15/2013	NT	ICCQBEE/239797 Document Generation	BALBOA API ID
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0685483862	HAZ	02/15/2013	NT	Document Number 10080586	BALBOA API ID
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0685483862	HAZ	02/15/2013	NT	Doc Claim Packet Request	BALBOA API ID
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0685483862	HAZ	02/14/2013	CBR	CR BUR RPT STATUS-N/EXPIRE DT = 03/01/13	SYSTEM ID
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0685483862	HAZ	02/14/2013	CBR	MANUAL REQUEST: CBR SPECIAL COMMENT = ANV	SYSTEM ID
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0685483862	HAZ	02/14/2013	CBR	DELINQUENT: 60 DAYS	SYSTEM ID
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0685483862	HAZ	02/14/2013	CBR	INP-TRD RESULTS BOLD: CBR-DT-82000713	SYSTEM ID
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0685483862	HAZ	02/14/2013	NT	Phone: 732-492-8672	CRISTIAN RAMIREZ
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0685483862	HAZ	02/14/2013	NT	Time Any	CRISTIAN RAMIREZ
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0685483862	HAZ	02/14/2013	NT	FINANCIAL INFORMATION COLLECTED FOR HAZ	CRISTIAN RAMIREZ
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0685483862	HAZ	02/14/2013	NT	LMT BORR-FIN REC ADDED	CRISTIAN RAMIREZ
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0685483862	HAZ	02/14/2013	NT	Financial Package Recd, Inaged as WOUT. Package sent for review. Kshahmed 4873	CRISTIAN RAMIREZ
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0685483862	HAZ	02/14/2013	DM	DFT REASON 1 CHANGED TO: CASUALTY LOSS	CRISTIAN RAMIREZ
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0685483862	HAZ	02/14/2013	DM	ACTION/RESULT CD CHANGED FROM 00AL10 TO 00TE	CRISTIAN RAMIREZ
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0685483862	HAZ	02/14/2013	NT	100805432023 User Notes	BALBOA API ID
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0685483862	HAZ	02/14/2013	NT	NEW LOSS-SPK W/ EDWARD CALLERS # 726-662-6672N	BALBOA API ID
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0685483862	HAZ	02/14/2013	NT	CO: Fitch/Fitch Dwelling Com-Updated FDDA: Yes	BALBOA API ID
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0685483862	HAZ	02/14/2013	NT	Investor: Freddie Mac Property	BALBOA API ID
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0685483862	HAZ	02/14/2013	NT	ICCQBEE/239797 Authorized Contact Updated	BALBOA API ID
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0685483862	HAZ	02/14/2013	NT	ICCQBEE/239797 Tracking No 239797	BALBOA API ID
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0685483862	HAZ	02/14/2013	NT	**New Loss Report**	BALBOA API ID
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0685483862	HAZ	02/14/2013	NT	Loan Status: Delinquent	BALBOA API ID
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0685483862	HAZ	02/14/2013	NT	Mortgage Due Date: 12/01/2012	BALBOA API ID
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06854833662	HAZ	02/14/2013	NI	Loss, windo-Hurricane	BALBOA API ID
06854833662	HAZ	02/14/2013	NT	Approx. Loss Date:10/29/2012	BALBOA API ID
06854833662	HAZ	02/14/2013	NT	Estimated Loss Amount:\$9413.80	BALBOA API ID
06854833662	HAZ	02/14/2013	NT	Catastrophe:390 Hurricane Sandy	BALBOA API ID
06854833662	DM	02/14/2013	TT	B2,SD RCVD A LTR STATING ACCT IS IN DEFAULT & A FAF IS INCLUDED,SD SET UP FB ON THE ACCT,ADV FB IS	NELA CABANES
06854833662	DM	02/14/2013	DM		NELA CABANES

Page 8 of 17

000054339862	FSV	02/07/2013	NT	3895.	URGENT, PLEASER PUNJAB UNDER INVESTIGATION. - URGENT	YASHODHURA NARA
00054339862	FSV	02/04/2013	FSV	URGENT TYPE D ORDERED.	REAR CD - AUTO DEL.	SYSTEM ID
008554339862	DM	02/04/2013	DM	EARLY IND. SCORE 265 MODEL. E86C	SYSTEM ID	SYSTEM ID
008554339862	CIT	02/02/2013	CIT	003 New CIT 351 Property has been found to be	USHA RANI ARVUA	USHA RANI ARVUA
00854339862	CIT	02/02/2013	CIT	distressed, FILMNC Form 105 for has been	USHA RANI ARVUA	USHA RANI ARVUA
00854339862	CIT	02/02/2013	CIT	Property submitted to FILMNC Distressed	USHA RANI ARVUA	USHA RANI ARVUA

**July 14, 2014**

### Loan History

Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
0685483862	FSV	01/14/2013	NT	RAWI 14855	RAWI BABU THOTA
0685483862		01/14/2013	D19	DEF - OPTIONS TO AVOID FORECLOSURE	SYSTEM ID
0685483862		01/10/2013	CBR	CR BUR RPT STATUS-N/EXPIRE-DT = 03/01/13	SYSTEM ID
0685483862		01/10/2013	CBR	MANUAL REQUEST: CBR SPECIAL COMMENT = AW	SYSTEM ID
0685483862		01/10/2013	CBR	DELINQUENT: 30 DAYS	SYSTEM ID
0685483862	FSV	01/04/2013	NT	Exterior disaster inspection ordered from	API CSRV
0685483862	FSV	01/04/2013	NT	Core logic: no preservation work without GMAC	API CSRV

Date Data as-of:

Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
0685483862	FSV	01/04/2013	NT	approval	API CSRV
0685483862		01/02/2013	DM	EARLY IND: SCORE 385 MODEL E130C	SYSTEM ID
0685483862	00	12/28/2012	EDR	FILMC ACTION CODE 03 CHANGED FROM 20 TO	LAILA BEGUM
0685483862	00	12/28/2012	EDR	FILMC ACTION DT 03 CHANGED 11/12/12 TO 0000/00	LAILA BEGUM
0685483862		12/18/2012	D28	BILLING STATEMENT FROM REPORT R828	SYSTEM ID
0685483862		12/14/2012	CBR	CR BUR RPT STATUS-N/EXPIRE DT = 03/01/13	SYSTEM ID
0685483862		12/14/2012	CBR	MANUAL REQUEST: CBR SPECIAL COMMENT = AW	SYSTEM ID
0685483862		12/14/2012	CBR	CURRENT: < 30 DAYS	SYSTEM ID
0685483862		12/05/2012	DM	BANK-IND: SCORE 099 MODEL E130C	SYSTEM ID
0685483862		11/29/2012	BKR	BANKRUPTCY C1 CHANGED FROM 0131825 TO 0012468	HEATHER KERN-SCRIPT
0685483862		11/29/2012	BKR	BANKRUPTCY C2 CHANGED FROM 0012468 TO 0012503	HEATHER KERN-SCRIPT
0685483862		11/29/2012	BKR	BANKRUPTCY C3 CHANGED FROM 0012503 TO 0131825	HEATHER KERN-SCRIPT
0685483862		11/29/2012	FOR	FORECLOSURE C1 CHANGED FROM 0131825 TO 0012468	HEATHER KERN-SCRIPT
0685483862		11/29/2012	FOR	FORECLOSURE C2 CHANGED FROM 0012468 TO 0012503	HEATHER KERN-SCRIPT
0685483862		11/29/2012	FOR	FORECLOSURE C3 CHANGED FROM 0012503 TO 0131825	HEATHER KERN-SCRIPT
0685483862		11/28/2012	NT	Please advise items that they were approved for a 3	BETINA MILLER
0685483862		11/28/2012	NT	month \$0.00 print reqd forb. Forb must be setup on	BETINA MILLER
0685483862		11/28/2012	NT	contractual due date, however the LC freeze and	BETINA MILLER
0685483862		11/28/2012	NT	credit suppression have been backdated to the date	BETINA MILLER
0685483862		11/28/2012	NT	into Nov as the request was made in Nov. The forb	BETINA MILLER
0685483862		11/28/2012	NT	DOES NOT extend or defer the pymts to the end of	BETINA MILLER
0685483862		11/28/2012	NT	the loan. Prints still come due as normal prints can	BETINA MILLER
0685483862		11/28/2012	NT	be made any amt and any time during the term of	BETINA MILLER
0685483862		11/28/2012	NT	the forb, any pymts not made will come due at the	BETINA MILLER
0685483862		11/28/2012	NT	end of the forb (2/28/13) and they will need to	BETINA MILLER
0685483862		11/28/2012	NT	set up argmts. Will follow up monthly.	BETINA MILLER
0685483862	DDSG	11/28/2012	DDSG	WOOLM - NATURAL DISASTER FORECLOSURE	BETINA MILLER

July 14, 2014

Loan History Acct with comments and Date Prompt No CLA.rpt

# Loan History

0685483862	STOP	11/28/2012	DM	LATE CHARGE FREEZE UPDATE 11/01/12 09:01/13 C	BETINA MILLER
0685483862	STOP	11/28/2012	NT	LMT-2-1: Disaster Forbearance Request Approved	BETINA MILLER
0685483862	STOP	11/28/2012	NT	Customer not required to pay in payments.	BETINA MILLER
0685483862	STOP	11/28/2012	NT	Payments of \$0.00 to be made on 12/01/12-02/28/13	BETINA MILLER
0685483862	STOP	11/28/2012	NT	Please DO NOT return any funds during the Disaster	BETINA MILLER
0685483862	STOP	11/28/2012	NT	FB Plan months and apply and transfer to SFT. Do not	BETINA MILLER
0685483862	STOP	11/28/2012	NT	send CIT 840, thanks.	BETINA MILLER
0685483862	COLSO	11/28/2012	CIT	002 DONE 11/28/12 BY TLR 03108	BETINA MILLER

Date Data as-of:

Transaction a Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
0685483862	COLSO	11/28/2012	CIT	TSK TYP 009-REFERRAL DISAST	BETINA MILLER
0685483862		11/28/2012	LMT	REGULATORY FBR (661) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	MONITOR TERMS (532) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	FORBEARANCE REQUEST INV (732) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	FORBEARANCE REQUEST INV (731) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	DISASTER FORBEARANCE (960) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	SEND FOR EXECUTION (501) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	PURSUAS FORBEARANCE (660) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	LMT SOLUTION PURSUED (5) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	COMPLETE FIN PKG REC (3) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	ASSESS FINANC PKG (2) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	REFERRED TO LOSS MIT (1) COMPLETED 11/28/12	BETINA MILLER
0685483862		11/28/2012	LMT	APPROVED FOR LMT 11/28/12	BETINA MILLER
0685483862	HAZ	11/27/2012	NT	b2 ci re the expedite of the request for the	MARY OLIVEROS
0685483862	HAZ	11/27/2012	NT	insurance claims. acty quit that the loss draft	MARY OLIVEROS
0685483862	HAZ	11/27/2012	NT	dept is expanding its effort. provided direct	MARY OLIVEROS
0685483862	HAZ	11/27/2012	NT	number. rfered. //okive o 8412849	MARY OLIVEROS
0685483862		11/27/2012	DM	TT B2 CI DECLARED COLATERAL DAMAGE DUE TO HURICANE	JAYSON DELEON
0685483862		11/27/2012	DM	SANDY ALREADY CALLED INSURANCE. OFFER FB AND NO	JAYSON DELEON
0685483862		11/27/2012	DM	PRIMANTS TO BE RCV FROM DEC UP TO FEB.82 CANNOT	JAYSON DELEON
0685483862		11/27/2012	DM	CONTRIBUTE ANY AMOUNT. B2 ALSO ASK TO REFI ACCOUNT	JAYSON DELEON
0685483862		11/27/2012	DM	XFER TO DIRECT LENDING. JAYSOND8413404	JAYSON DELEON
0685483862		11/27/2012	DM	DELT REASON 1 CHANGED TO: PROPERTY PROBLEM	JAYSON DELEON
0685483862		11/27/2012	DM	ACTION/RESULT CD CHANGED FROM OAM TO BRCP	JAYSON DELEON
0685483862		11/27/2012	DM	GAIN THE CUSTOMERS COMMITMENT TO RESOLVE THE	JAYSON DELEON
0685483862		11/27/2012	DM	DELINQUENCY THROUGH A PROMISE TO PAY OR REPAYMENT	JAYSON DELEON

July 14, 2014

Loan History Acct with comments and Date Prompt No C.L.A.rep

# Loan History

0685483862	COL02	11/27/2012	DM	PCN, INBOUND CALL	JAYSON DELEON
0685483862	COL02	11/27/2012	DM	ACTION/RESULT CD CHANGED FROM TO DM	JAYSON DELEON
0685483862	RFDNT	11/27/2012	NT	b2 declared action/transaction due to hurricane	JAYSON DELEON
0685483862	RFDNT	11/27/2012	NT	sanity	JAYSON DELEON
0685483862	COL02	11/27/2012	CIT	002, ref ct 3, out toward toiles declared	JAYSON DELEON
0685483862	COL02	11/27/2012	CIT	disaster due to hurricane, assistance requested	JAYSON DELEON
0685483862	COL02	11/27/2012	CIT	collateral damage claim filed; b2 ad cannot	JAYSON DELEON
0685483862	COL02	11/27/2012	CIT	contribute any amount, b1 can be reach	JAYSON DELEON
0685483862	COL02	11/27/2012	CIT	8732-462-6672, Adv if approved call will be	JAYSON DELEON

Date Data as of:

Transaction s Account Number	Area ID	Trans Date	Trans Type	Transaction Message	Trans User Name
0685483862	COL02	11/27/2012	CIT	resp for unpaid call for info to pay	JAYSON DELEON
0685483862	COL	11/27/2012	NT	b2 ct to ing financial assistance due to hardship	MARIA CARLOTA REMO
0685483862	COL	11/27/2012	NT	caused by Hurricane Sandy, has financial and	MARIA CARLOTA REMO
0685483862	COL	11/27/2012	NT	property impacted; provided FEMA's direct	MARIA CARLOTA REMO
0685483862	COL	11/27/2012	NT	#1-800-621-FEMA (3362) then referred call to	MARIA CARLOTA REMO
0685483862	COL	11/27/2012	NT	Collected direct # for further assistance; carlotas	MARIA CARLOTA REMO
0685483862	COL	11/27/2012	NT	r 0412332	MARIA CARLOTA REMO
0685483862	INO	11/27/2012	NT	b2 ct to ing financial assistance due to hardship	MARIA CARLOTA REMO
0685483862	INO	11/27/2012	NT	caused by Hurricane Sandy, has financial and	MARIA CARLOTA REMO
0685483862	INO	11/27/2012	NT	property impacted; provided FEMA's direct	MARIA CARLOTA REMO
0685483862	INO	11/27/2012	NT	#1-800-621-FEMA (3362) then referred call to	MARIA CARLOTA REMO
0685483862	INO	11/27/2012	NT	Collected direct # for further assistance; carlotas	MARIA CARLOTA REMO
0685483862	INO	11/27/2012	NT	r 0412332	MARIA CARLOTA REMO
0685483862	CSH	11/16/2012	NT	Tate Changes Bypassed November 2012, December	API CSRV
0685483862	CSH	11/16/2012	NT	2012 and January 2013 due to Hurricane Sandy	API CSRV
0685483862	CSH	11/13/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685483862	CSH	11/09/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685483862	DIS	11/06/2012	NT	EARLY IND: SCORE 089 MODEL ENVC	SYSTEM ID
0685483862	DIS	11/01/2012	NT	FEMA declaration due to Hurricane Sandy.	API CSRV
0685483862	DIS	11/01/2012	NT	Individual assistance declared on 10/30/12	API CSRV
0685483862	DIS	11/01/2012	DM	DISPATCHED TO 0685483862, ACTION DATE 01/28/13	API CSRV
0685483862	D28	10/15/2012	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
0685483862	DMD	10/12/2012	DMD	0000000 00:00:00	DAVOX INCOMING FILE
0685483862	DMD	10/12/2012	DMD	0000000 00:00:00	DAVOX INCOMING FILE
0685483862	DMD	10/12/2012	DMD	10/12/12 19:26:29 ANSWERING MACHINE	DAVOX INCOMING FILE

July 14, 2014

Loan History Acct with comments and Date Prompt No CLA:rep

**GMAC Mortgage****SmartWatch**

Customer Relationship Group  
7 Carnegie Plaza  
Cherry Hill, NJ 08032-1020

October 10, 2007

|||||  
Suzanne Koegler  
Edward Tobias  
75 Princeton Oval  
Freehold, NJ 07728-5352  
|||||

Dear Suzanne and Edward,

It's a pleasure to have you as a GMAC Mortgage, LLC customer. Here's hoping that you're reaching all of the goals you've set for yourself and your family this year.

This SmartWatch® report is a confidential and comprehensive summary of your GMAC Mortgage account. In your report, you'll find the latest snapshot of your account activity as well as valuable information you can use to:

- Get cash out of your home
- Lower your monthly payment
- Save money over the life of your loan
- Buy your next home

Log on to SmartWatch Online to get even more from your report.

Just visit [gmacmortgage.com](http://gmacmortgage.com), log on to your account, click on the SmartWatch logo, and you're ready to go. With SmartWatch Online, you can access daily rate updates, tailor property value information and home equity balances to reflect your current situation — and much more. It's a great resource that can help you make timely and smart decisions relating to your mortgage and other financing needs.

**Ready to buy a new home?**

We want to keep your business when you move. Recent rates on 30 year fixed-rate mortgages have been as low as 5.750% interest (5.976% APR).\*\* Call today to learn more about discounts and benefits such as cash back on the purchase or sales price of your home and closing cost or interest rate discounts.

**GMAC Mortgage is here to help.**

For questions about your SmartWatch report or anything to do with your GMAC Mortgage account, please call the SmartWatch Center at 1-866-578-7997. We're at your service.

Sincerely,

*Tom Evich*

Tom Evich  
Vice President

P.S. No matter what you need — to get cash out of your home, to lower your monthly payments, or to save money over the life of your loan — we are here to help. Call us at 1-866-578-7997.

**SMARTWATCH®  
SAVINGS ALERT**

If you are planning a move  
we can really help.

- Your Personal Move Consultant can show you how to get hundreds in cash back savings! Get \$3 cash back for every \$1,000 of your new home's purchase/sales price when you use an affiliated real estate broker.<sup>†</sup>
- Rates as low as 5.750% interest (5.976% APR)\*\*
- **SAVE \$500 ON CLOSING COSTS OR GET 1/8% OFF YOUR INTEREST RATE\***

Call the  
SmartWatch Center at  
1-866-578-7997  
or visit  
[gmacmortgage.com](http://gmacmortgage.com)



## Your SmartWatch Report.

No matter what plans you have (or don't have) for your home, the information we've provided is to help you make smart financing decisions.

### Your current loan information as of: 10/02/2007

Property: 93 Wisconsin St.  
Long Beach, NY 11561-1421

Loan #: 0685483862

Loan type: 30 Year Fixed Rate

Rate: 5.500%

Monthly payment: \$1,697.69 (Principal and interest only)

Approximate principal balance<sup>1</sup>: \$291,043.20

Remaining term: 336 months

Adjusted remaining term: 336 months  
(After pre-paid principal or extra payments, for example.)

Original appraised home value:  
\$390,000.00

Estimated current value<sup>2</sup>: \$422,000.00

Total estimated equity<sup>2</sup>: \$130,957.00

### Goal: Get cash now.

- Do a "cash out" refinance with a new 30 Year Fixed Rate mortgage and assuming a rate of 6.375% (6.597% APR).<sup>3</sup>

**Get up to \$88,757 cash.** If you choose the maximum amount, your monthly payment (principal and interest) would be about \$2,369.

- Do a "cash out" refinance with the same or lower payment (principal and interest), with a new 30 Year Fixed Rate mortgage, and assuming a rate of 6.375% (6.523% APR).<sup>3</sup>

A 'cash-out' refinance, for the same payment you have today, may not make sense for you now. Please call us for more information.

- Get a home equity loan or line of credit.<sup>4</sup>

**Get \$46,557 to \$130,957.** This is the potential amount of equity available for a home equity loan or line of credit, and represents 80% to 100% of your estimated equity. (The actual amount you can borrow depends on various factors. Call for more information.)

### Goal: Lower your monthly payment.

- Refinance your current balance with a 30 Year Fixed Rate loan and assuming a rate of 6.375% (6.523% APR).<sup>3</sup>

**You're already in good shape**, because your rate is about the same as or better than today's rate.

- Refinance and change to a 15 Year Fixed Rate loan and assuming a rate of 6.125% (6.364% APR).<sup>3</sup>

**No monthly savings.** If you switched to a 15 Year Fixed Rate mortgage, your monthly payment (principal and interest) would actually go UP by about \$778 per month. You may achieve significant savings, however, over the life of your loan. See G on the next page.

## Goal: Save over the life of your loan.

- **Refinance your current balance** with a 30 Year Fixed Rate and assuming a rate of 6.375% (6.523% APR).<sup>3</sup>

**No long-term savings.** You would actually pay \$83,239 MORE than your current loan. You may, however, lower your monthly payment. See D on the previous page.
- **Refinance and change to a 15 Year Fixed Rate loan** and assuming a rate of 6.125% (6.364% APR).<sup>3</sup>

**\$124,800 life-of-loan savings.** Your monthly payment (principal and interest) would be about \$2,476.
- **Get an Instant Decision on a GMAC Mortgage Equity Rewards Card<sup>SM</sup>**, the MasterCard<sup>®</sup> credit card that helps pay down your mortgage!<sup>5</sup>

**Every Purchase you make pays down your mortgage!** For every \$1 you charge to the card, you earn one point. Each time you earn 2,500 points, \$25 will be applied to your GMAC Mortgage balance automatically on a quarterly basis. Call 1.800.821.8758 to apply now!

## Goal: Buy your next home.

- **Available equity for down payment.** The estimated amount you would have for a new home down payment from the sale of your existing home.<sup>6</sup>

**\$105,637.** This figure represents 94% of your estimated equity, based on your loan balance and approximate home value less 6% Real Estate commission.
- **Lock in your rate for up to 60 days. Think of it as protection against rising rates.**<sup>7,8,9</sup>

After you have an agreement of sale on your new home, simply request your rate lock when you submit your mortgage application. If we don't meet your closing date, we'll give you \$250.
- **Real Estate Cash Back Offer.** Advance registration is required and certain restrictions apply. Not available in all states. Call 1.877.531.4622 for more information or to register.<sup>10</sup>

**Get \$3 cash back per \$1,000** of the sale price and/or purchase price of your home when you sell or buy through our affiliated nationwide network of real estate brokers.

### Surprised about your equity?

As home values change, you may have much more equity than you realized. This may make it a good time to sell if you've been considering a move.

**Questions?**

Just call the SmartWatch Center at 866-578-7997

These examples are based on mortgage rates as of 10/02/2007

# SmartWatch<sup>SM</sup>

## Footnotes and disclosures for Letter

- \* Closing Cost Discount / Interest Rate Reduction. Interest rate reduction or closing cost discount offer valid on your next first lien home purchase mortgage loan with GMAC Mortgage, LLC and is subject to underwriting approval and program guidelines. If you select the closing cost discount then a \$500 closing credit will be provided at loan closing. If the interest rate discount option is selected, the rate reduction will be applied toward the current market rate for the loan program selected at the time of the interest rate lock-in. The rate reduction cannot be combined with any special rate promotion. Only one closing cost credit or interest rate discount per loan transaction. For example, on a purchase price of \$315,000 with \$250,000 financed for a term of 30 years at a fixed interest rate of 6.750% (6.813% APR) would result in 360 monthly principal and interest payments of \$1621. With a 1/8% reduction in rate, a \$250,000 loan amount financed for a term of 30 years at an interest rate of 6.625% (6.688% APR) would result in 360 monthly principal and interest payments of \$1601. Taxes and insurance are extra. Fees and charges apply and may vary by state. Rate is for example only and is not necessarily reflective of the current market rate. Call for current rate information and information on fees and charges. In order to receive the discount, you must call the number listed on this letter and mention the offer at the time of application. Not all loan programs qualify.
- \* Cash-back offer may be limited or prohibited by law in some states and is not available in those states. Location of property being purchased or sold determines applicable state law. Cash-back offer not available in a number of states, including the following: Alaska, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Jersey, Oklahoma, Oregon, Tennessee and West Virginia. You must contact GMAC Home Services before contacting a real estate broker. Cash-back is based on the purchase/sale price of the home. Allow 30 days after closing for cash-back to be awarded. If your home is already listed, or you are currently working with a real estate agent, this is not a solicitation for business. Real estate services provided by GMAC Home Services.
- \*\* Subject to underwriting approval. Application required; not all applicants will be approved. Full documentation & property insurance required. Loan secured by a lien against your property. Terms, conditions & restrictions apply. Fees & charges apply and may vary by state. Offer assumes a loan amount of \$251,000 or above, downpayment of 20% or greater, and a credit score of 731 or above. For example, as of 10/29/2002, a \$251,000 loan amount financed at 5.750% interest (5.976% APR) for 30 years would result in 360 monthly principal and interest payments of \$1,464.77. Rate available on loan amounts up to \$447,000 (contiguous US) (\$625,500 in Alaska and Hawaii) on owner-occupied single-family residential properties. Recent rate but subject to change without notice. Your rate and term may vary. Call for details.

## Footnotes and disclosures for SmartWatch<sup>SM</sup> Report

- 1 This is not an actual pay-off figure.
- 2 The estimated home value and equity stated in this report are approximations only and cannot be used in a loan application. For loans over one year in age, the estimated home value and equity are based on the use of an Automated Valuation Model (AVM). An AVM is produced by the use of a third party service provider which analyzes recent properties sold in your area to arrive at an estimated property value. If you are obtaining new loan financing with GMAC Mortgage, LLC, a standard third party property appraisal report will be required which GMAC Mortgage, LLC will use in making a property underwriting decision. Please note that the results from a formal third party appraisal report may differ from the approximate property value assessed by the use of an AVM and may also differ from your home's original appraised value. This figure could change based on other liens of record and any change in market value of your property. Customers who have Private Mortgage Insurance (PMI) must get a full appraisal, not AVM to remove PMI.
- 3 Rate information contained in this refinance illustration reflects rates made available to GMAC Mortgage, LLC on a given date and are subject to change without notice and are based on borrower eligibility. Payment savings calculations are based on principal and interest only. Taxes and insurance are extra. Loans that exceed 80% of the property value may require private mortgage insurance which is not reflected in payment or savings amounts shown. Terms and conditions apply as well as closing costs. Be advised that applicants who are refinancing to a longer loan term in order to lower their monthly payment amount will see an increase in the total amount paid over the life of the loan. Availability of this program is subject to your submission of a formal loan application and approval. Please call for more information or to apply. As an example, a \$200,000 mortgage with a term of 30 years at a fixed interest rate of 6.5% (6.641% APR) would result in 360 monthly principal and interest payments of \$1,264.14. This example assumes \$2,900 closing costs paid in cash at closing. GMAC Mortgage provides several options for reduced and no-closing cost loans. This example does not include additional fees and charges required for most loans and assumes all closing costs are paid in cash at the time of closing.
- 4 Not available in all states.
- 5 There are fees associated with the Mortgage Accelerator program. Please call for more information.
- 6 Assumes borrower sells their current home and pays off their existing mortgage to obtain the down payment to purchase a new home. Programs may be available, subject to availability and borrower's qualification, to provide temporary financing for the purchase down payment until the existing home is sold.
- 7 Pre-approval is for credit purposes only and is not a commitment to lend. Contact a GMAC Mortgage, LLC representative for complete details.
- 8 Subject to state law, an up-front lock-in fee may be required. To the extent a lock-in fee is collected, you will have until the midpoint of the lock-in period to produce a fully executed agreement of sale for the purchase of a property. The new loan must close and fund prior to the expiration of the lock-in period. The lock-in fee is applicable to closing costs, but non-refundable subject to applicable state law.
- 9 Only one \$250 payment will be issued by GMAC Mortgage, LLC on any approved loan which does not close and fund by the date mutually agreed upon by the borrower(s) and GMAC Mortgage, LLC. The closing date is to be mutually agreed upon at the time of the rate lock agreement. If the guaranteed closing date is not met, refund requests must be made in writing from the borrower and should be forwarded to the originating loan officer. A check in the amount of \$250 made payable to the borrower(s) will be sent to the borrower(s) approximately 30 days from loan closing. This closing date guarantee does not apply if your closing is delayed by circumstances not within our control including, but not limited to: liens or other title defects affecting the property you are purchasing; loss of employment; closing date changes initiated by the buyer, seller or Realtor; failure to submit required information within 5 business days of our request; changes in the initial loan application or loan program due to events such as an inability to verify the property value, applicant's or the co-applicant's income; or requirements stipulated but not met within the sales agreement (e.g. termite certificate). Offer subject to approval. Terms may change. Contact a GMAC Mortgage, LLC representative for complete details.
- 10 Cash-back offer may be limited or prohibited by law in some states and is not available in those states. Location of property being purchased or sold determines applicable state law. Cash-back offer not available in a number of states, including the following: Alaska, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Jersey, Oklahoma, Oregon, Tennessee and West Virginia. You must contact GMAC Home Services before contacting a real estate broker. Cash-back is based on the purchase/sale price of the home. Allow 30 days after closing for cash-back to be awarded. If your home is already listed, or you are currently working with a real estate agent, this is not a solicitation for business. Real estate services provided by GMAC Home Services.
- 11 Call for details about our Express Purchase program for current customers. Not all borrowers will qualify for expedited processing.

\*\*\*GMAC Mortgage Construction Loans empowered by GMAC Bank. ©GMAC Bank Member FDIC and Equal Housing Lender.

NOTE: For all programs, terms and conditions apply and may change.

We make every effort to assure that the information provided is accurate as of the date we prepare the data for printing, but on rare occasions errors in our systems and printing may occur. If you believe there is an error in the information provided or to confirm this information, please contact us at the number on the front of this letter.

AZ Mortgage Banker License # BK-7670; Licensed by the Department of Corporations under the California Residential Mortgage Lending Act; Georgia Residential Mortgage Licensee #5845; Illinois Residential Mortgage Licensee; MA Mortgage Lender and Broker License #MC1336; MN: This is not an offer to enter into an agreement. Any such offer may only be made in accordance with Minn. Stat. Section 47.206 (3) and (4); Mississippi Licensed Mortgage Company; MT Licensed Broker License #000207; Licensed by the New Hampshire Banking Department; Licensed by the N.J. Department of Banking and Insurance; Licensed Mortgage Banker - NYS Banking Department; Licensed by the PA Dept. of Banking; Rhode Island Licensed Lender and Loan Broker; Licensed by the Virginia State Corporation Commission License # MLB-1435; GMAC Mortgage, LLC 11008 Witmer Rd. Horsham, PA 19044 (215-682-1000); 7 Carnegie Plaza, Suite 100, Cherry Hill, NJ 08003 (856-874-5584); 578 Veterans Memorial Highway, Hauppauge, NY 11788 (631-382-2499); Some loan products may not be available in all states.

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GMAC Mortgage LLC  
Loss Mitigation  
233 Gibraltar Rd., Suite 600  
Horsham, PA 19044

75 Princeton Oval  
Englewood, NJ 07728

February 14, 2013

VIA Email: financialpackage@gmacm.com

Re: 93 Wisconsin St.  
Long Beach, NY 11561  
Account Number 0685483862

Dear Sir or Madam:

Attached please find the borrowers' Financial Analysis Form with regard to the above-referenced property.

If you have any questions or need further information, please call 732-462-6672. Thank you very much.

Sincerely,



Edward N. Tobias

" C "



# GMAC Mortgage

PO Box 780  
Waterloo, IA 50704-0780

January 16, 2013

03100

SUZANNE KOEGLER  
EDWARD TOBIAS  
75 PRINCETON OVAL  
FREEHOLD NJ 07728

Property Address:

93 WISCONSIN STREET  
LONG BEACH NY 11561

Account Number 0685483862

Dear Homeowner:

We understand how difficult it may be to ask for help when you need it the most. We want you to know that we are here to help you.

The best way to find out what options are available is to help us understand your financial situation by completing the attached application package, including all the required documentation and returning it to us within 15 days.

If for any reason you are not able to complete the entire application package, as an alternative, you may complete this form by checking all of the appropriate boxes to the right. This will help us to identify potential programs available to meet your needs.

Once we have received this information from you, we will assign a Relationship Manager to personally help you through this process. Once your Relationship Manager is assigned, they will stay with you throughout the process and assist with anything you may need.

Please do not delay in returning this information. We look forward to working with you.

Thank you.

Loan Servicing

<input checked="" type="checkbox"/>	Keep the Property	<input type="checkbox"/>	Not Keep the Property
<input type="checkbox"/>	Where I live	<input type="checkbox"/>	Second Home
<input checked="" type="checkbox"/>	Investment (Rental) Property		
<input type="checkbox"/>	Check here if you or a member of your family is or has been on active duty with the military. *You may be eligible for benefits and protection under the Servicemembers Civil Relief Act (SCRA)		
<input type="checkbox"/>	A loss of income	<input checked="" type="checkbox"/>	Increase in expenses
<input checked="" type="checkbox"/>	Can't sell my home	<input checked="" type="checkbox"/>	Can't rent my home
<input type="checkbox"/>	Marital problems	<input checked="" type="checkbox"/>	Damage to the home due to hurricane, flood, earthquake, etc.
<input type="checkbox"/>	Unemployed	<input type="checkbox"/>	Incarceration
<input type="checkbox"/>	Death of family member	<input type="checkbox"/>	Illness of family member
<input type="checkbox"/>	Other		

Fax this letter with your documentation attached to 1-866-709-4744, or Mail to: Loss Mitigation, 233 Gibraltar Rd., Suite 600, Horsham, PA 19044

What is the best phone number to reach you? (732) 462 - 6672

What is the best time to reach you? Any am/pm Time Zone

☐ Check here if your primary language is Spanish. This information will be utilized to attempt to assign you a Spanish-speaking Relationship Manager when available, after your documentation is received. *Marque aquí, si su lengua principal es el Español. Esta información será utilizada para tratar de asignar un Gerente de Relaciones que hable Español cuando esté disponible, después de que su documentación haya sido recibida. Si necesita ayuda para completar esta documentación, por favor llámé a nuestro departamento de servicio al cliente.*



<b>To: Loss Mitigation</b> <b>From: Suzanne Koegler/Edward Tobias</b> <b>Fax to: 866-709-4744</b>		<b>Account Number</b> 0685483862 or mail to: Loss Mitigation 233 Gibraltar Road Suite 600 Horsham, PA 19044
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<b>*Borrowers Name</b> Suzanne Koegler		<b>*Co-Borrowers Name</b> Edward Tobias	
<b>*Social Security Number</b>	<b>Date of Birth</b>	<b>*Social Security Number</b>	<b>Date of Birth</b>
Home Phone Number With Area Code 732-462-6672		Home Phone Number With Area Code 732-462-6672	
Cell or Work Phone Number With Area Code		Cell or Work Phone Number With Area Code	
Email Address SuzanneMK@aol.com		Email Address tobiaslaw@optonline.net	
<b>*Mailing Address</b> 75 Princeton Oval, Freehold, NJ 07728			
<b>*Property Address (If Same As Mailing Address, Write Same)</b> 93 Wisconsin St., Long Beach, NY 11561			
<b>*Section 1a: Additional Borrowers Information (Required)</b>			
<b>*How many single family properties other than your primary residence you or any co-borrower(s) own individually, jointly, or with others?</b>			3
<b>*Has the mortgage on your primary residence ever had a HAMP trial period plan or permanent modification?</b>			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>*Has the mortgage on any other property that you or any co-borrower own had a permanent HAMP modification</b>			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, how many?
<b>*Are you or any co-borrower currently in or being considered for a HAMP trial period plan on a property other than your primary residence?</b>			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

<b>*The property is:</b> <input type="checkbox"/> owner occupied/primary residence <input checked="" type="checkbox"/> a rental property <input type="checkbox"/> seasonal/second home <input checked="" type="checkbox"/> vacant If Owner Occupied include a recent utility bill in your name at the property address. If Renter Occupied, include a copy of the current lease agreement.			
<b>*I want to:</b> <input checked="" type="checkbox"/> Keep the Property <input type="checkbox"/> Not Keep the Property			
Is the property listed for sale?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If yes, what is the date the property was listed for sale? April, 2011			
Is the property for sale by owner?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Real Estate Agent Name Maria Aramanda		Real Estate Agent Phone Number 516-849-6035	
Have you received an offer on the property?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If yes, Date of the offer received		Amount of offer Received	
Have you filed for bankruptcy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, what chapter did you file? <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 13 Filing Date:			
Bankruptcy Case Number:		Has your bankruptcy been discharged? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>If there are additional Liens/Mortgages or Judgments on this property, please name the person(s), company or firm and their telephone numbers</b>			
Lien Holder's Name/Service	Balance	Contact Phone Number	Loan Number



Borrower's Name SUZANNE KOEGLER

Account Number 0685483862

Include combined expenses from the borrower and co-borrower (if any).  
If you include income and expenses from a household member who is not a borrower, please specify using a separate page if necessary.  
If additional space is needed, please include an additional page.

**\*\*\*\*ALL INCOME MUST BE DOCUMENTED\*\*\*\***

You will be required to provide supporting documentation for any income you claim in this section. To determine what supporting documentation is required for each income type, please refer to the supporting documentation column below. Match the number listed in the supporting documentation column to the number listed in the Income Validation section (section 5) of this package.

Gross Salary/W2 Wages	1	<input checked="" type="checkbox"/> Employed <input type="checkbox"/> Unemployed Income Frequency <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Semi-monthly <input type="checkbox"/> Monthly <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Employed <input type="checkbox"/> Unemployed Income Frequency <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Weekly <input type="checkbox"/> Semi-monthly <input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Other As Billed
Gross Salary/ W2 Wages = total monthly income before any tax withholding or employer deductions, including part-time income, commissions, tips, housing allowance and/or bonus.	Paystub	\$ 13,723.58/monthly	\$ /monthly
Self Employed/1099 (*Document the Net Profit from page 3, Section 3)	2 Pending	\$ /monthly	\$ 4,000.00 /monthly
Unemployment Income	3 N/A	\$ 0 /monthly	\$ 0 /monthly
Child Support Income/Alimony Income *You are not required to disclose Child Support, Alimony, or Separate Maintenance income, unless you choose to have it considered.	4 N/A	\$ 0 /monthly	\$ 0 /monthly
Social Security, Disability, Death Benefits, or Pension	5 For short term disability use 6 N/A	If entering income for disability select one of the following <input type="checkbox"/> Long Term <input type="checkbox"/> Short Term \$ 0 /monthly	If entering income for disability select one of the following <input type="checkbox"/> Long Term <input type="checkbox"/> Short Term \$ 0 /monthly
Other monthly income from Pensions, annuities, or Retirement plans.	6 N/A	\$ 0 /monthly	\$ 0 /monthly
Rental income from investment property No Current Rent	7 N/A	\$ 0 /monthly	\$ 0 /monthly
Rental income from room rent of primary residence	8 N/A	\$ 0 /monthly	\$ 0 /monthly
Contribution income from person(s) residing at the property.	9 Ltr.	\$ 500 /monthly	\$ 0 /monthly
Public assistance (Food Stamps, Welfare, etc.)	9 N/A	\$ 0 /monthly	\$ 0 /monthly
Other (Investment income, royalties, interest, dividends, trusts, etc)	10	\$ /monthly	\$ 10 /monthly
		\$ 14,223.58/monthly	\$ 4,010.00 /monthly

\*\*\*\*Please make sure that all monthly expenses are broken down to a monthly amount.\*\*\*\*

*At your Primary Residence (the property where you reside) do you: <input type="checkbox"/> Rent <input checked="" type="checkbox"/> Own If you Rent, provide your monthly rental obligation. If you Own, provide your monthly mortgage obligation	\$ 3,806	\$ Joint	Out of pocket medical insurance premiums (not deducted from your paycheck)	\$ 0	\$ 0
*Primary Second Mortgage Payment	\$	\$	Medical Expenses	\$ 1,000	\$ 100
*Other Mortgage Payments	\$ 2,759	\$ Joint	*HOA/Condo Fees	\$ 0	\$ 0
Alimony Payments	\$ 0	\$ 0	Credit Card(s)/Installment Loans	\$ 2,500	\$ 350
Child Support Payments	\$ 0	\$ 0	Food/Household Supplies	\$ 2,000	\$ Joint
Dependant Care Payment	\$ 0	\$ 0	Utilities/Water/Sewer/Phone(s)/Cable	\$ 1,550	\$ Joint
Personal Loans/Student Loans	\$ 0	\$ 0	Donations	\$ 100	\$ 25
Auto Loans/Lease	\$ 600	\$ 0	*Property Taxes (if not escrowed)	\$ Escrowed	
Auto Expenses (gas, maintenance, insurance, etc.)	\$ 300	\$ 300	*Insurance - Hazard, wind, flood, etc. (if not escrowed)	\$ Escrowed	\$
	\$	\$	Other	\$ 4,000	\$
				19,015	750
*Estimated Value of your primary property	\$ 560,800	140K Mtge	*401K/ESOP Account(s) Balance	\$ 150,000	
*Estimated Value of Other Real Estate Owned	\$ 533,000	266K Mtge	*Stocks/Bonds/CDs Balance	\$ 3,000	
*Checking Account Balance	\$ 1,000		Other Investments	\$	
*Savings Account Balance	\$ 0		Less Mortgage Principal	\$ (406,000)	
*Life Insurance Cash Value	\$ 10,000			\$ 851,800	



Borrower's Name SUZANNE KOEGLER

Account Number 0685483862

For each borrower who is self-employed the most recent 3 consecutive months Profit and Loss Statement is required for each business. If a Borrower has more than one business, we require a Profit and Loss Form for each business. The example document may be used to supply the required information.

Company Name Law Offices of Edward N. Tobias, L.L.C. Percentage of ownership: ☒ 100% ☐ 75% ☐ 50% ☐ 25% Other \_\_\_\_\_  
(If left blank, we will consider it 100% ownership.)

Month and Year must be indicated.	Month 1 Month <u>10</u> Year <u>12</u>	Month 2 Month <u>11</u> Year <u>12</u>	Month 3 Month <u>12</u> Year <u>12</u>	Total Month <u>12</u> Year <u>12</u>
Gross Profit	\$ 0	\$ 0	\$ 0	\$ 37,000
Advertising	\$	\$	\$	\$
Amortization	\$	\$	\$	\$
Auto Expenses	\$	\$	\$	\$
Bank Charges	\$	\$	\$	\$
Depreciation	\$	\$	\$	\$
Dues & Subscriptions	\$	\$	\$	\$
Employed Benefits	\$	\$	\$	\$
Insurance	\$	\$	\$	\$
Interest	\$	\$	\$	\$
Office Expenses	\$	\$	\$	\$
Payroll Taxes	\$	\$	\$	\$
Rent	\$	\$	\$	\$
Repairs & Maintenance	\$	\$	\$	(Estimated)
Salaries & Wages for Yourself	\$	\$	\$	\$
Salaries & Wages for Employees	\$	\$	\$	\$
Supplies	\$	\$	\$	\$
Taxes & Licenses	\$	\$	\$	\$
Telephone	\$	\$	\$	\$
Utilities	\$	\$	\$	\$
Other	\$	\$	\$	\$
<b>Total Operating Expenses</b>	\$	\$	\$	\$ 5,000
Income Taxes	\$	\$	\$	\$ 14,000
<b>Net Profit</b>	\$	\$	\$	\$ 18,000

For each borrower who receives rental income from an investment property an Investment Property Schedule is required. If additional space is needed, please include an additional page with the same information listed below.

Property Number	Property Street Address	Property City, State, and Zip Code	Number of Units (1,2,3,4, or 5+)	Status Circle All That Apply R- Rented V- Vacant PS- Pending Sale F- Foreclosure	Gross Monthly Rental Income	Monthly Mortgage Payment (excluding taxes and insurance)	Monthly Insurance	Monthly Taxes	Monthly HOA/ Condo Dues (if applicable)
1	93 Wisconsin, Long Beach	CA 90801	1	R V PS F	\$ 783	\$ 1,925	\$ 333	\$ 500	\$ N/A
2	Property is currently non-rentable because of			R V PS F	\$	\$	\$	\$	\$
3	damage from Hurricane Sandy			R V PS F	\$	\$	\$	\$	\$
4	Information given is partial			R V PS F	\$	\$	\$	\$	\$
5	year rental plus summer			R V PS F	\$	\$	\$	\$	\$
6	2012 rent received \$9,400			R V PS F	\$	\$	\$	\$	\$
7	2012 Mtge. & expenses \$36,329			R V PS F	\$	\$	\$	\$	\$
					\$	\$	\$	\$	\$





Borrower's Name SUZANNE KOEGLER

Account Number 0685483862

1	Paid by an Employer (W-2) including part-time employment, other earned (i.e. bonus, commission, housing allowance, and/or tips)	<input checked="" type="checkbox"/> Copy of two most recent pay stubs from your employer including year to date information. (not older than 90 days) <input type="checkbox"/> Copy of third party documentation describing the nature of the income (i.e. employment contract and or printouts documenting tips) and indicating the income is not a one-time payout.
2	Self Employed or Receive a 1099  2011 1040 Attached 2012 is Pending	<input type="checkbox"/> Copy of most recent quarterly or year-to-date Profit and Loss statement (See Section 3 for a sample of a 3 Month Self Employment Income Statement (Profit and Loss Form)) <input type="checkbox"/> If you choose to use a form other than the Profit and Loss statement provided, please be sure to include the following: • Business Name • Borrower name(s) • Income and Expenses provided must be for three most recent consecutive months • Gross Profit, Net Profit, and Itemized Expenses for each month (indicate the month and year if utilizing your own profit and loss form) <input checked="" type="checkbox"/> The most recent year's signed tax return and/or tax extension if applicable. <input type="checkbox"/> Copies of two most recent bank statements. (Again not older than 90 days)
3	Unemployment	<input type="checkbox"/> Copy of benefits statement or letter from the provider that states the amount, frequency, and duration of the benefit. <input type="checkbox"/> Documentation must show receipt of unemployment benefits have begun or will begin within 60 days.
4	Child Support or Alimony *You are not required to disclose Child Support, Alimony, or Separate Maintenance income, unless you choose to have it considered	<input type="checkbox"/> Copy of divorce decree, separation agreement, or other legal written agreement filed with the court that shows the amount of the award and period of time over which it will be received <input type="checkbox"/> Copies of two most recent bank statements verifying deposit amounts or other documentation (i.e. 2 copies of checks) showing receipt of child support income. (Again not older than 90 days) (You are not required to disclose Child Support, Alimony, or Separate Maintenance income, unless you choose to have it considered)
5	Social Security, Disability, Death Benefits, Annuities, retirement plans, or Pension	<input type="checkbox"/> Copy of benefits statement or letter from the provider that states the amount, frequency, and the start and end date of the benefit. <input type="checkbox"/> Copies of two most recent bank statements verifying deposit amounts or other documentation (i.e. 2 copies of checks) showing receipt of benefit income. (Again not older than 90 days)
6	Short Term Disability (6 months or less)	<input type="checkbox"/> Copy of benefits statement or letter from the provider that states the amount, frequency, and the start and end date of the benefit. <input type="checkbox"/> Copy of two most recent pay stubs, prior to going on short term disability, from your employer including year to date information.
7	Rental Income From an Investment Property  Checks Attached	<input checked="" type="checkbox"/> Copy of most recent federal tax return with all schedules, including Schedule E-Supplemental Income and Loss. <input type="checkbox"/> Current lease agreement(s) for all investment properties <input checked="" type="checkbox"/> Copies of two most recent bank statements verifying deposit amounts or other documentation (i.e. 2 copies of checks) showing receipt of income. (Again not older than 90 days) See Section 4 for a sample of an Investment Property Schedule.
8	Rental Income from Room Rental of the Primary Residence	<input type="checkbox"/> Copy of Current Lease Agreement <input type="checkbox"/> Copies of two most recent bank statements verifying deposit amounts or other documentation (i.e. 2 copies of checks) showing receipt of income. (Again not older than 90 days)
9	Income NOT Specified Above (including Public Assistance, contribution income from person residing at the property, etc.).	<input checked="" type="checkbox"/> Signed letter from the person(s)/entity (company) that contributes the income showing the amount and frequency of the income. <input type="checkbox"/> Copies of two most recent bank statements verifying deposit amounts or other documentation (i.e. 2 copies of check) showing receipt of income. (Again not older than 90 days) <input type="checkbox"/> If receiving public assistance, include the award letter indicating the amount and frequency
10	Other Income (investment, interest, dividends, royalties, trusts, etc.)	<input type="checkbox"/> Copies of two most recent bank statements verifying deposit amounts or other documentation (i.e. 2 copies of checks) showing receipt of income. (Again not older than 90 days)
<p>If applying for the Making Home Affordable Modification Program we encourage you to provide the following, however this is not a requirement of other modification programs. The law provides that a lender or servicer may not discriminate either on basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person.</p>		
<b>BORROWER</b> <input type="checkbox"/> I do not wish to furnish this information Ethnicity: <input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input checked="" type="checkbox"/> White Sex: <input checked="" type="checkbox"/> Female <input type="checkbox"/> Male		<b>CO-BORROWER</b> <input type="checkbox"/> I do not wish to furnish this information Ethnicity: <input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input checked="" type="checkbox"/> White Sex: <input type="checkbox"/> Female <input checked="" type="checkbox"/> Male
Please check here if you or a family member is on active duty with our military. You may be eligible for benefits and protection under the Service Members Civil Relief Act "SCRA". <input type="checkbox"/>		



Borrower's Name SUZANNE KOEGLER

Account Number 0685483862

<input type="checkbox"/> Borrower Death	<input type="checkbox"/> Death of Family Member	<input type="checkbox"/> Military Service	<input type="checkbox"/> Payment Adjustment
<input type="checkbox"/> Illness of Borrower	<input type="checkbox"/> Illness of Family Member	<input checked="" type="checkbox"/> Inability to Sell Property	<input checked="" type="checkbox"/> Inability to Rent Property
<input type="checkbox"/> Tenant not Paying	<input type="checkbox"/> Reduction of Income	<input type="checkbox"/> Bankruptcy Filed	<input type="checkbox"/> Unemployment
<input type="checkbox"/> Marital Difficulties (Examples include going through a legal separation or filing for divorce)	<input checked="" type="checkbox"/> Excessive Financial Obligations (Examples may be large medical expenses, credit card debt, or college tuition payments)	<input type="checkbox"/> Business Failure (Examples would be loss of business income)	<input type="checkbox"/> Ownership Transfer Is Pending (If the home is in the process of being sold)
<input type="checkbox"/> Incarceration (Sentenced to a city, county, state, or federal jail)	<input checked="" type="checkbox"/> Property Problem (Anything that may be defective about the property such as a costly repair that needs to be made)	<input checked="" type="checkbox"/> Casualty Loss (Unexpected event such as hurricane, flood, or earthquake that damages the property)	<input type="checkbox"/> Other

\*If selecting more than one of the boxes above, indicate the primary hardship. Casualty Loss

\*Has the reason for your hardship been resolved? (circle one) Yes/No

See Attached

The following information is requested by the federal government in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) You are required to furnish this information. The law provides that no person shall be eligible to begin receiving assistance from the Making Home Affordable Program, authorized under the emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.) or any other mortgage assistance program authorized or funded by that Act, if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years, of any one of the following: (A) felony, larceny, theft, fraud, or forgery, (B) money laundering or (C) tax evasion.

I/we certify under penalty of perjury that I/we have not been convicted within the last 10 years of any one of the following in connection with a mortgage or real estate transaction:

- (A) felony, larceny, theft, fraud, or forgery,
- (B) money laundering or
- (C) tax evasion

I/we understand that the servicer, the U.S. Department of the Treasury, or their agents may investigate the accuracy of my statements by performing routine background checks, including automated searched of federal, state and county databases, to confirm that I/we have not been convicted of such crimes. I/we also understand that knowingly submitting false information may violate Federal law.

This certification is effective on the earlier of the date listed below or the date received by the servicer.

**Personal Financial Hardship Affidavit of  
Suzanne Koegler and Edward N. Tobias**

**Loan No. 0685483862**

**Property Address: 93 Wisconsin St., Long Beach, NY 11561**

Our financial situation was first strained when our oldest daughter's family was forced to move in with us in 2009. Because of various issues in their lives, including her first pregnancy, they felt that this was the best decision so that they could put their lives back in order. They put the townhouse they had purchased after their marriage on the market at a greatly reduced price losing their entire down payment after paying off the mortgage and contributing extra money at closing. Shortly after moving in with us, our son-in-law became unemployed for over a year and their second child was born. This meant that just when he was able to find another job, our daughter left her job to go on maternity and family care leave. Happily, during their three years living with us they were able to work out their struggles, pay most of their other bills, and be able to rent a small apartment on their own. Of course, we supplemented their financial situation and coped with the increased expenses of five extra people in the house (our nephew also came to live with us at this time while he attended college).

Our oldest daughter's family was able to get their own apartment and moved out at the end of January, 2012. Our plan was to put the house up for sale in February. Then, we found out that our youngest daughter was also having financial difficulty. She had had her second child after a difficult pregnancy and her husband had just started another job after being laid off in 2011. We found that they had been unable to make their own mortgage payments and that their home was facing foreclosure. They moved in with us in March, 2012 while they tried to get back on their feet. They put their house up for sale but again the market has been so terrible that price of the townhouse they purchased just four years ago has deteriorated from \$285,000 to just \$170,000. Since we encouraged them to put the standard 20% down payment on their starter home, they have lost all of their life savings and are facing financial disaster of their own because of the foreclosure. This changed our plan and is continuing to strain our financial resources as we support our child and grandchildren.

Then, on October 29, 2012, Hurricane Sandy devastated the Northeast. Like many areas around us, the city of Long Beach, New York was deeply affected. The entire city was inundated by the ocean and the bay. Our house was flooded and severely damaged. At the time, the house was rented and the tenants were forced to evacuate. Because of the extensive damage to the property, the property is now not rentable. Additionally, we are uncertain whether the property is able to be repaired in light of the age of the building and the zoning changes brought on by the scope of the disaster.

0685483862

Based on my discussions with my real estate agent, the market in Long Beach has been deteriorating for quite some time. The house was damaged by last year's Hurricane Irene. I made repairs well in excess of what the insurance recovery provided. These repairs cost as much as the rent that was collected from the property for the entire year. Even worse, a surfing competition that was scheduled immediately after the hurricane was cancelled by the city; the property was to be rented for \$10,000 during this time and these monies were lost with no recovery.

The property has been on the market for a number of years under a "rent or sell" basis. Unfortunately, there have been no offers on the property and the rents available are far below what the property costs to upkeep. I have tried to rent the property on both a yearly basis and on as a summer rental and have been unable to make the property viable. I consider this house as a forced rental as this was not our original intention when we purchased the property. Our youngest daughter had just been accepted to Hofstra University for the Masters Program in School Counseling. I had sat back and watched the real estate market rise while we rented an apartment for her during her undergraduate education. She had a few friends who were going to attend Hofstra with her and our opinion was that, based on the prevailing market, a short-term investment in an upscale shore community was a prudent move. If she wanted to remain in the house after graduation, she would be able to live there while she worked in New York City. Unfortunately, because of the economic conditions of the time, she could not find employment that was convenient to her location. Concurrently, the housing market vanished and we were forced to rent the property until a potential buyer could be found. Even though the rent that was available did not equal the mortgage, insurance and taxes, our resources were enough to carry the property.

This has now all changed and this property is now unsustainable. Because of the hurricane, I have been forced to seek forbearance from the mortgage company while I try to see what I can do with the property. The flood insurer has proposed a \$90,000 settlement based on their estimate that the house only has a cash value of \$108,000. They estimated that the property sustained \$100,000 worth of damage and deducted \$10,000 in depreciation and deductible. We are ineligible for FEMA aid and are currently awaiting word from the SBA to see if a loan can be forthcoming to replace the house with a raised model that can meet the new flood map criteria. This may be the only way to remedy this bad situation. The house, even as it was, could not be sold in this market except in a short sale situation. Rebuilding with the insurance proceeds will not put the house in good shape and will not protect the property from future storm damage. A replacement option, coupled with a principal reduction may enable us to weather the downturn until the market comes back. In this way, we can save this forced investment property so that our grandchildren can have a good financial future.

Dated

2-14-13

  
Suzanne M. Koegler & Edward N. Tobias



Borrower's Name SUZANNE KOEGLER

Account Number 0685483862

Is the property a rental property? ☒ Yes ☐ No If yes, please complete Section 10. If no, please skip to Section 11.

☒ By checking this box and initialing below, I am requesting a mortgage modification under MHA with respect to the rental property described in section 4 and I hereby certify under penalty of perjury that each of the following statements is true and correct with respect to that property.

1. I intend to rent the property to a tenant or tenants for at least five years following the effective date of my mortgage modification. I understand that the servicer, the U.S. Department of the Treasury or their respective agents may ask me to provide evidence of my intention to rent the property during such time. I further understand that such evidence must show that I used reasonable efforts to rent the property to a tenant or tenants on a year-round basis, if the property is or becomes vacant during such five-year period.

Note: The term "reasonable efforts" includes, without limitation, advertising the property for rent in local newspapers, websites or other commonly used forms of written or electronic media, and/or engaging a real estate or other professional to assist in renting the property, in either case, at or below market rent.

2. The property is not my secondary residence and I do not intend to use the property as a secondary residence for at least five years following the effective date of my mortgage modification. I understand that if I do use the property as a secondary residence during such five-year period, my use of the property may be considered to be inconsistent with the certifications I have made herein.

Note: The term "secondary residence" includes, without limitation, a second home, vacation home or other type of residence that I personally use or occupy on a part-time seasonal or other basis.

3. I do not own more than six (6) single-family homes (i.e. one-to-four unit properties) (exclusive of my primary residence).

Notwithstanding the foregoing certification I may at any time sell the property, occupy it as my primary residence, or permit a legal dependent, parent, or grandparent to occupy it as such party's principal residence with no rent charged or collected, none of which will be considered to be inconsistent with the certifications made herein.

This certification is effective on the earlier of the date listed below or the date the Request for Mortgage Assistance (RMA) is received by your servicer.



Initials: Borrower

SK

Co-borrower

R.K.



Borrower's Name SUZANNE KOEGLER

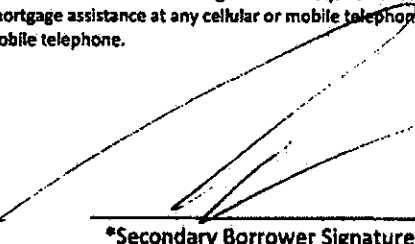
Account Number 0685483862

In making this request for consideration to review my loan terms I/we certify under penalty of perjury

1. That all of the information in this document is truthful and the event(s) identified is/are the reason that I/we need to request a modification of the terms of my/our mortgage loan, short sale, or deed-in-lieu of foreclosure.
2. I/we understand that the Servicer, the U.S. Department of the Treasury, owner or guarantor of my mortgage, or its agents may investigate the accuracy of my/our statements and /or may require me/us to provide supporting documentation. I/we also understand that knowingly submitting false information may violate Federal law.
3. I/we understand the servicer will obtain a current credit report on all borrowers obligated on the Note.
4. I/we understand that if I/we have intentionally defaulted on my/our existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this document, the servicer may cancel any Agreement under Making Home Affordable or any mortgage relief granted and may pursue foreclosure on my/our home.
5. I/we understand any fee to validate the value of the property will be assessed to the account.
6. I/we have not received a condemnation notice, and there has been no change in the ownership of the Property since I/we signed the documents for the mortgage that I/we want to modify.
7. I/we certify that I/we will obtain credit counseling if it is determined that my/our financial hardship is related to excessive debt. For purposes of the Making Home Affordable program "excessive debt" means that my/our debt-to-income ratio after the modification would be greater than or equal to 55%.
8. If I am eligible for a trial period plan, repayment plan, or forbearance plan, and I accept and agree to all terms of such plan, I also agree that the terms of the Acknowledgement and Agreement are incorporated into such plan by reference as if set forth in such plan in full. My first timely payment following my Servicer's determination and notification of my eligibility or prequalification for a trial period plan, repayment plan, or forbearance plan (when applicable) will serve as acceptance of the terms set forth in the notice sent to me that sets forth the terms and conditions of the trial period plan, repayment plan, or forbearance plan.
9. I/we agree that when the Servicer accepts and posts a payment during the term of any repayment plan, trial period plan, or forbearance plan it will be without prejudice to, and will not be deemed a waiver of, the acceleration of my loan or foreclosure action and related activities shall not constitute a cure of my default under my loan unless such payments are sufficient to completely cure my entire default under my loan.
10. I/we are willing to provide all requested documents and to respond to all Servicers questions in a timely manner.
11. I/we understand that the Servicer will use the information in this document to evaluate my/our eligibility for a loan modification or short sale or deed-in-lieu of foreclosure, but the Servicer is not obligated to offer me/us assistance based solely on the statements in this document.
12. I/we agree that my prior waiver as to payment of escrow items in connection with my/our loan has been revoked.
13. I/we agree to the establishment of an escrow account and the payment of escrow items if an escrow account never existed on the loan.
14. I/we understand that the Servicer will collect and record personal information, including, but not limited to, my/our name, address, telephone number, social security number, credit score, income payment history, government monitoring information, and information about account balances and activity. I/we understand and consent to the disclosure of my/our personal information and the terms of any Making Home Affordable Agreement by Servicer to (a) the U.S. Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Homeowner affordability and Stability Plan; (c) any investor, insurer, guarantor, or servicer that owns, insures, guarantees or services my/our first lien on subordinate lien (if applicable) mortgage loan(s); (d) companies that perform support services in conjunction with Making Home Affordable; and (e) any HUD certified housing counselor.
15. I/we agree that to be considered for the Making Home Affordable program, or any other program, all required documentation must be received no later than 7 business days prior to the scheduled foreclosure sale date.
16. NOTICE TO TEXAS BORROWERS: If the loan you are requesting to modify is a Texas Home Equity Loan or Line of Credit, your loan does not qualify to be modified. However, please proceed with submitting your final information so that we can examine your financials situation and determine if there is a repayment program available to you in order to prevent foreclosure.
17. I/we understand the Servicer will not refer the account to foreclosure or conduct the foreclosure sale if already referred, while it is being reviewed for the Making Home Affordable program unless required by your investor. The review will not begin until all required documentation is received.
18. I/we consent to being contacted, concerning this request for mortgage assistance at any cellular or mobile telephone number I have provided to the Lender. This includes text messages and telephone calls to my cellular or mobile telephone.

  
\*Primary Borrower Signature

2-14-12  
Date

  
\*Secondary Borrower Signature



2-14-12  
Date

**Please keep a copy of this completed and signed financial analysis form, all pages, and any supporting documentation provided, for your records.**

If you have questions about this document or the modification process, please call us at the phone number listed on your monthly account statement. If you need further counseling, you can call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). The Hotline can help with questions about the program and offers free HUD-certified counseling services in English and Spanish.

**NOTICE TO BORROWERS**

Be advised that you are signing the following documents under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution.

By signing the enclosed documents you certify, represent and agree that:

"Under penalty of perjury, all documents and information I have provided to Lender in connection with this Agreement, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-646-2009 (toll-free), 202-622-4559 (fax), or [www.sig tarp.gov](http://www.sig tarp.gov). Mail can be sent to Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



OCWEN Loan Servicing, LLC  
HELPING HOMEOWNERS IS WHAT WE DO!  
OCWEN.MORTGAGEBANKSITE.COM



# GMAC Mortgage

## Notice of Servicing Transfer and Welcome to Ocwen Loan Servicing, LLC

February 7, 2013

SUZANNE KOEGLER  
EDWARD TOBIAS  
75 PRINCETON OVAL  
FREEHOLD NJ 07728-5352

### Your Loan Account Details as of 02/04/2013

Account Number:  
0685483862

Property Address:  
93 WISCONSIN STREET  
LONG BEACH NY 11561

Transfer Date:  
02/16/2013

Principal Balance:  
\$264,993.14

Escrow Balance:  
-\$986.25

Loan Rate:  
5.500%

Next Payment Due:  
12/1/2012

Payment Amount:  
Please refer to your  
mortgage account statement

### Ocwen Loan Servicing, LLC Customer Care Contact Information

Phone:  
800-766-4622  
Personal assistance:  
6:00 a.m. - 10:00 p.m. CT M-F  
and 8:00 a.m. - 2:00 p.m. Sat  
24-hour automated service  
Email:  
ocwen@mortgagebanksite.com  
Web:  
ocwen.mortgagebanksite.com

Mail:  
PO Box 780  
Waterloo, IA 50704-0780

Dear SUZANNE KOEGLER and EDWARD TOBIAS,

The servicing of your mortgage loan, that is, the right to collect payments from you, is transferring from your current servicer, GMAC Mortgage ("GMACM") to your new servicer, Ocwen Loan Servicing, LLC ("Ocwen") effective February 16, 2013.

Rest assured this transfer of servicing does not affect any term or condition of the mortgage documents, other than those directly related to the servicing of your loan. There will be no change to your account number or payment address; only to the name of the company to which you make your payment. All mailing addresses and phone numbers you previously used to contact GMACM will remain the same but, as of February 16, 2013, they will be maintained by Ocwen. You will continue to be served in a knowledgeable and professional manner, just as you have in the past.

GMACM will stop accepting payments on February 15, 2013. Ocwen will begin to accept payments on February 16, 2013. Send all payments due on or after that date to Ocwen. A temporary coupon is provided below for your convenience. Any account notices prepared prior to February 16, 2013 will reflect GMACM; all notices prepared on or after February 16, 2013 will reflect Ocwen. In addition any payments received by GMACM after February 15, 2013 will automatically be processed by Ocwen.

If you are currently using GMACM's automatic payment service, this program will continue with no lapse in service. If you previously made your payment through GMACMortgage.com, on or after February 16, 2013 you can go to ocwen.mortgagebanksite.com and use your same login ID and password for account access. If you use a third party payment service, please request they update their records to have payments made payable to Ocwen Loan Servicing, LLC effective February 16, 2013.

Because GMACM is the subject of a bankruptcy proceeding, federal law requires either GMACM or Ocwen to send you this notice not more than 30 days after the effective date of the transfer of the servicing of your loan. In this case, all necessary information is combined in this one notice. Please review the reverse side of this letter for legal disclosures, notices and state requirements. It's our goal to make this transfer as seamless as possible.

Enclosed are your (1) final GMAC Mortgage annual privacy notice and (2) your Ocwen initial privacy notice that becomes effective with the start of your new customer relationship with Ocwen. Please see the Ocwen initial privacy notice for important opt-out elections.

We appreciate the opportunity to serve your home loan needs. If you have questions relating to the transfer of servicing please contact our Transfer Hotline at 1-888-926-3479 weekdays from 8:00 AM to 7:00 PM, Central Time. If you have questions about the general servicing of your loan please call GMACM Customer Care at 800-766-4622, 6:00 a.m. - 10:00 p.m. CT M-F and 8:00 a.m. - 2:00 p.m. Sat.

Sincerely,

Charles R. Hoecker  
Sr. Vice President, Customer Care  
GMAC Mortgage

Sincerely,

William C. Erbey  
President and Chief Executive Officer  
Ocwen Loan Servicing, LLC

Enclosure(s)

001485-7300(1/13)

## Mortgage Payment Coupon

Account Number:  
0685483862

Due Date:  
12/1/2012

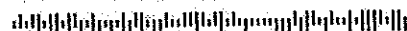
Mortgage Payment:  
See above

SUZANNE KOEGLER

Please assist us in applying your payment.	
Full Payments	\$.....
ADDITIONAL Principal	\$.....
ADDITIONAL Escrow	\$.....
Late Charge	\$.....
Other Fees (specify)	\$.....
Total Amount Enclosed	\$.....



OCWEN  
PO BOX 9001719  
LOUISVILLE, KY 40290-1719



02 1212 0685483862 00000000 00000 22222 7

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

APR - 4 2012

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

UNITED STATES OF AMERICA,  
*et al.*,

Plaintiffs,

v.

BANK OF AMERICA CORP. *et al.*,

Defendants.

12 0361

Civil Action No. \_\_\_\_\_

**CONSENT JUDGMENT**

WHEREAS, Plaintiffs, the United States of America and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia filed their complaint on March 12, 2012, alleging that Residential Capital, LLC, Ally Financial, Inc., and GMAC Mortgage, LLC (collectively, "Defendant") violated, among other laws, the Unfair and Deceptive Acts and Practices laws of the Plaintiff States, the False Claims Act, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the



Servicemembers Civil Relief Act, and the Bankruptcy Code and Federal Rules of Bankruptcy Procedure;

WHEREAS, the parties have agreed to resolve their claims without the need for litigation;

WHEREAS, Defendant, by its attorneys, has consented to entry of this Consent Judgment without trial or adjudication of any issue of fact or law and to waive any appeal if the Consent Judgment is entered as submitted by the parties;

WHEREAS, Defendant, by entering into this Consent Judgment, does not admit the allegations of the Complaint other than those facts deemed necessary to the jurisdiction of this Court;

WHEREAS, the intention of the United States and the States in effecting this settlement is to remediate harms allegedly resulting from the alleged unlawful conduct of the Defendant;

AND WHEREAS, Defendant has agreed to waive service of the complaint and summons and hereby acknowledges the same;

NOW THEREFORE, without trial or adjudication of issue of fact or law, without this Consent Judgment constituting evidence against Defendant, and upon consent of Defendant, the Court finds that there is good and sufficient cause to enter this Consent Judgment, and that it is therefore ORDERED, ADJUDGED, AND DECREED:

#### I. JURISDICTION

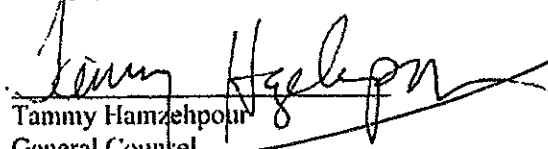
1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a), and 1367, and under 31 U.S.C. § 3732(a) and (b), and over Defendant. The Complaint states a claim upon which relief may be granted against Defendant. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2) and 31 U.S.C. § 3732(a).

For Ally Financial, Inc.:

\_\_\_\_\_  
William B. Solomon, Jr.  
Group Vice President and General Counsel

200 Renaissance Center  
Mail Code 482-B09-B11  
Detroit, Michigan, 48265

For Residential Capital, LLC and GMAC  
Mortgage, LLC:

  
\_\_\_\_\_  
Tammy Hamzehpour  
General Counsel

1100 Virginia Drive  
Fort Washington, Pennsylvania 19034

(r) Quality control, quality assurance or compliance or audit testing or oversight related to the Covered Servicing Conduct; for avoidance of doubt, quality control or compliance reviews associated with the origination, sale, or securitization of mortgage loans does not constitute Covered Servicing Conduct;

(s) Reporting, certification or registration requirements related to any of the Covered Servicing Conduct; and

(t) Communications with borrowers with respect to the Covered Servicing Conduct.

(4) Deficiencies in the COMPANY's or any of its affiliates' participation in and implementation of the Hardest Hit Fund Program and Making Home Affordable Program, including all of its component programs (e.g., HAMP, 2MP, HAFA, UP, PRA-HAMP, FHA-HAMP, FHA2LP, and RD-HAMP).

D. The United States further contends that it has certain civil claims based on the conduct of the COMPANY and its affiliated entities in originating mortgage loans (the "Covered Origination Conduct"). Such Covered Origination Conduct consists of all activities of the COMPANY, of any affiliated entity during or prior to such time as it was an affiliated entity, and all of the current or former officers, directors, employees, and agents of any of the foregoing, directed toward directly or indirectly originating, assisting in the origination of, or purchasing single-family residential mortgage loans and excludes conduct occurring following the closing of

the borrower's mortgage loan that is otherwise covered as the Covered Servicing Conduct. Such Covered Origination Conduct includes, but is not limited to, the following conduct:

(1) Submitting loans for insurance endorsement and claims for insurance benefits for FHA loans that the COMPANY or any affiliated entity during or prior to such time as it was an affiliated entity endorsed or underwrote as a participant in the FHA's Direct Endorsement Program that failed to meet any applicable underwriting requirements, including those set forth in the applicable version of the HUD Handbook 4155.1, as supplemented by relevant mortgagee letters, all as of the time of origination;

(2) Submitting loans for insurance endorsement or claims for insurance benefits for FHA loans that the COMPANY or any affiliated entity during or prior to such time as it was an affiliated entity endorsed or underwrote as a participant in the FHA's Direct Endorsement Program while failing to implement applicable quality control measures; and

(3) Other deficiencies in originating single-family residential mortgage loans relating to:

(a) Processing, underwriting, closing, or funding of loans and the terms and conditions of such loans;

(b) Approving or denying loan applications;

(c) Pricing of loans, including the charging and splitting of any fee or discount points;

(d) Recommendations of particular types of loan products, loan features or terms and conditions of any loan;

(e) Valuing the properties used as collateral for such loans, including use of employee, independent and vendor management appraisers and alternative valuation methods such as AVMs and BPOs;

(f) Use of vendors, including vendor management companies and other providers of real estate settlement services, whether affiliated or unaffiliated;

(g) Payment of fees or other things of value in connection with the making or receiving of referrals of settlement and other services;

(h) Conduct of any vendors used in connection with the origination of loans, including, but not limited to, closing agents, appraisers, real estate agents, title review, flood inspection, and mortgage brokers;

(i) Drafting of loan documents and loan disclosures and the provision of such disclosures;

(j) Obtaining and recording of collateral documents relating to loans, including, but not limited to, use of trustees or designees on mortgages or deeds of trust;

(k) Advertising of loans and solicitation of borrowers;

(l) Licensing, registration, qualifications or approvals of employees in connection with the Covered Origination Conduct; and

/s/

---

**KEITH V. MORGAN**  
Assistant United States Attorney  
United States Attorney's Office  
555 4th Street, NW, Room E4814  
Washington, DC 20530  
Tel.: 202-514-7228  
Fax: 202-514-8780

Charlotte, North Carolina 28255 )  
)  
BAC HOME LOANS SERVICING, LP f/k/a )  
COUNTRYWIDE HOME LOANS )  
SERVICING, LP, )  
4500 Park Grenada )  
Calabasas, California 91302-1613 )  
)  
COUNTRYWIDE HOME LOANS, INC., )  
4500 Park Grenada )  
Calabasas, California 91302 )  
)  
COUNTRYWIDE FINANCIAL CORPORATION, )  
4500 Park Grenada )  
Calabasas, California 91302 )  
)  
COUNTRYWIDE MORTGAGE )  
VENTURES, LLC, )  
4500 Park Grenada )  
Calabasas, California 91302-1613 )  
)  
COUNTRYWIDE BANK, FSB, )  
100 North Tryon Street )  
Charlotte, NC 28202 )  
)  
CITIGROUP INC., )  
399 Park Ave. )  
New York, New York 10022-4614 )  
)  
CITIBANK, N.A., )  
399 Park Ave. )  
New York, New York 10022-4617 )  
)  
CITIMORTGAGE, INC., )  
1000 Technology Drive )  
O'Fallon, Missouri 63368 )  
)  
J.P. MORGAN CHASE & COMPANY, )  
270 Park Avenue )  
New York, New York 10017 )  
)  
JPMORGAN CHASE BANK, N.A. )  
1111 Polaris Parkway )  
Columbus, OH 43240 )  
)  
RESIDENTIAL CAPITAL, LLC, )

1100 Virginia Drive )  
Fort Washington, Pennsylvania 19034 )

ALLY FINANCIAL, INC., )  
200 Renaissance Center )  
P.O. Box 200 )  
Detroit, Michigan 48265 )

GMAC MORTGAGE, LLC, )  
1100 Virginia Drive )  
Fort Washington, Pennsylvania 19034 )

GMAC RESIDENTIAL FUNDING CO. LLC )  
8400 Normandale Lake Boulevard )  
Minneapolis, Minnesota 55437 )

WELLS FARGO & COMPANY, )  
420 Montgomery Street Front )  
San Francisco, CA 94104-1205 )

WELLS FARGO BANK, N.A., )  
One Home Campus )  
Des Moines, IA 50328 )

Defendants. )  
\_\_\_\_\_ )

### COMPLAINT

Now comes the United States, and the States of Alabama, Alaska,  
Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida,  
Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine,  
Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska,  
Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina,  
North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota,  
Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin,  
Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and



Virginia, and the District of Columbia by and through their undersigned attorneys,  
and respectfully allege as follows:

### INTRODUCTION

1. This is a civil action filed jointly by the United States; the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming; the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia; and the District of Columbia against Residential Capital, LLC, Ally Financial, Inc., and GMAC Mortgage, LLC; Bank of America Corporation, Bank of America, N.A., BAC Home Loans Servicing, LP, Countrywide Financial Corporation, Countrywide Home Loans, Inc., Countrywide Mortgage Ventures, LLC, and Countrywide Bank FSB; Citigroup Inc., Citibank, N.A., and CitiMortgage, Inc.; J.P. Morgan Chase & Company and J.P. Morgan Chase Bank, N.A.; and Wells Fargo & Company and Wells Fargo Bank, N.A., for misconduct related to their origination and servicing of single family residential mortgages.

2. As described in the allegations below, Defendants' misconduct resulted in the issuance of improper mortgages, premature and unauthorized foreclosures, violation of service members' and other homeowners' rights and

protections, the use of false and deceptive affidavits and other documents, and the waste and abuse of taxpayer funds. Each of the allegations regarding Defendants contained herein applies to instances in which one or more, and in some cases all, of the Defendants engaged in the conduct alleged.

### THE PARTIES

3. This action is brought by the United States of America, on behalf of its agencies and departments, acting through the United States Department of Justice.

4. This action is also brought by the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming; the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia; and the District of Columbia. Collectively the plaintiffs identified in this paragraph are referred to here as the "plaintiff States." This action is brought by the Attorneys General of the plaintiff States pursuant to consumer protection enforcement authority conferred on them by state law and pursuant to *parens patriae* and common law authority. The Attorneys General are authorized to seek injunctive relief, restitution for consumers, and civil penalties for violation of the consumer protection laws of their States.

investors who agree to partial or full extinguishment of second liens associated with an FHA refinance.

45. *The FHA Refinance for Borrowers with Negative Equity (FHA Short Refinance) Program.* This program is partially supported by TARP funds and allows servicers and investors who write down a borrower's principal balance on a non-FHA-insured, existing, underwater, first-lien mortgage loan in connection with a refinancing to obtain FHA insurance on the newly refinanced mortgage. Treasury has provided a TARP-funded letter of credit for up to \$8 billion in loss coverage on these newly refinanced FHA loans.

46. *Housing Finance Agency Hardest Hit Fund (HHF).* HHF is a TARP-funded program designed to fund foreclosure prevention programs run by state housing finance agencies in states hit hardest by the decrease in home prices and in states with high unemployment rates. Eighteen states and Washington, D.C. have received approval for aid through this program.

#### **FACTUAL ALLEGATIONS**

##### **A. The Banks' Servicing Misconduct**

47. Each of the Banks services home mortgage loans secured by residential properties owned by individual citizens of the Plaintiff States, and of the United States.

48. Each Bank is engaged in trade or commerce in each of the Plaintiff States and is subject to the consumer protection laws of the States in the conduct of their debt collection, loss mitigation and foreclosure activities. The consumer

protection laws of the Plaintiff States include laws prohibiting unfair or deceptive practices.

**1. The Banks' Unfair, Deceptive, and Unlawful Servicing Processes**

49. Under the States' consumer protection laws, the Banks are prohibited from engaging in unfair or deceptive practices with respect to consumers.

50. In the course of their conduct, management and oversight of loan servicing in the Plaintiff States, the Banks have engaged in a pattern of unfair and deceptive practices.

51. The Banks' unfair and deceptive practices in the discharge of their loan servicing activities, include, but are not limited to, the following:

- a. failing to timely and accurately apply payments made by borrowers and failing to maintain accurate account statements;
- b. charging excessive or improper fees for default-related services;
- c. failing to properly oversee third party vendors involved in servicing activities on behalf of the Banks;
- d. imposing force-placed insurance without properly notifying the borrowers and when borrowers already had adequate coverage;
- e. providing borrowers false or misleading information in response to borrower complaints; and
- f. failing to maintain appropriate staffing, training, and quality control systems.

55. Each of the Banks regularly conducts or manages loan modifications on behalf of the entities that hold the loans and mortgages and that hired the Banks as servicers.

56. In the course of their servicing and oversight of mortgage loans, the Banks violated federal laws, program requirements and contractual requirements governing loss mitigation.

57. In the course of their conduct, management and oversight of loan modifications in the plaintiff States, the Banks have engaged in a pattern of unfair and deceptive practices.

58. The Banks' failure to discharge their required loan modification obligations, and related unfair and deceptive practices, include, but are not limited to, the following:

- a. failing to perform proper loan modification underwriting;
- b. failing to gather or losing loan modification application documentation and other paper work;
- c. failing to provide adequate staffing to implement programs;
- d. failing to adequately train staff responsible for loan modifications;
- e. failing to establish adequate processes for loan modifications;
- f. allowing borrowers to stay in trial modifications for excessive time periods;
- g. wrongfully denying modification applications;

- e. executing and filing affidavits in foreclosure proceedings that were not properly notarized in accordance with applicable state law;
- f. misrepresenting the identity, office, or legal status of the affiant executing foreclosure-related documents;
- g. inappropriately charging servicing, document creation, recordation and other costs and expenses related to foreclosures; and
- h. inappropriately dual-tracking foreclosure and loan modification activities, and failing to communicate with borrowers with respect to foreclosure activities.

**B. The Banks' Origination Misconduct**

**1. Unfair and Deceptive Origination Practices**

65. Under the States' consumer protection laws, the Banks are prohibited from engaging in unfair or deceptive practices with respect to consumers.

66. Each of the Banks regularly originates mortgage loans.

67. In the course of their origination of mortgage loans in the Plaintiff States, the Banks have engaged in a pattern of unfair and deceptive practices. Among other consequences, these practices caused borrowers in the Plaintiff States to enter into ~~unaffordable mortgage loans that led to increased foreclosures~~ in the States.

**2. The Direct Endorsement Program**

68. The FHA's Direct Endorsement Program is a vital part of its single-family insured mortgage program. Under the Direct Endorsement

**From:** Maria Aramanda  
**To:** "EDWARD TOBIAS";  
**Subject:** RE: 93 Wisconsin  
**Date:** Thursday, March 01, 2012 11:43:00 AM

---

Grand children are the best, keeps us young at heart.....ENJOY !  
Will keep you posted have offer of 325k ready to go let me know if you want to  
sell now or just hang on  
Warmest Regards

Maria

-----Original Message-----

**From:** EDWARD TOBIAS [<mailto:tobiaslaw@optonline.net>]

**Sent:** Thursday, March 01, 2012 11:36 AM

**To:** cbelleri@gullrealty.com; maria@gullrealty.com

**Subject:** 93 Wisconsin


Hello Maria:

Sorry to hear about Angie - I'm glad she's doing well. Everything is fine here -  
we're up to four grandchildren now - the oldest just turned three and the  
youngest just did nine months. We've got more birthday parties scheduled for  
the summer.

Here are some additional bills for the house. It's always hard to stay organized.  
Hope everything else is doing great. I'm also resending the attachment from the  
other day.

Thanks for all your help.

Ed

**From:** Maria Aamanda  
**To:** "Edward N. Tobias, Esq.";   
**Subject:** RE: 93 Wisconsin  
**Date:** Friday, September 21, 2012 11:17:13 AM

---

Ok will do

**From:** Edward N. Tobias, Esq. [mailto:tobiaslaw@optonline.net]  
**Sent:** Thursday, September 20, 2012 4:03 PM  
**To:** 'Maria Aamanda'  
**Subject:** RE: 93 Wisconsin

If you can get anyone up to 340 – I'll take it – There is still 266 principal on the house per this month's statement

Thanks, Ed

---

**From:** Maria Aamanda [mailto:maria@gullrealty.com]  
**Sent:** Thursday, September 20, 2012 2:40 PM  
**To:** 'Edward N. Tobias, Esq.'  
**Subject:** RE: 93 Wisconsin

Call me when you get time to discuss I can talk to the bank offers are coming in around 320 to 330

---

**From:** Edward N. Tobias, Esq. [mailto:tobiaslaw@optonline.net]  
**Sent:** Thursday, September 20, 2012 2:17 PM  
**To:** 'Maria Aamanda'  
**Subject:** RE: 93 Wisconsin

Hi Maria:

Thanks about the Verizon bill – I'll get with them about the credit report – Verizon is pretty ruthless for jumping to a collection account so fast

Also, here is the LIPA bill that just came today

On selling – I just need to get as much as I can and as soon as the market allows. At this stage, breaking even is unrealistic, I just want to get as much as I can and cash



**GULL REALTY, INC.**

Phone (516) 889-4600 Fax (516) 889-4684

**SALES**  
**OFFICE EXCLUSIVE CERTIFICATION**

Date: May 19, 2007

**TO: MULTIPLE LISTING SERVICE OF LONG BEACH, INC.**  
**300 SUNRISE HIGHWAY, WEST BABYLON, NEW YORK 11704**

I hereby certify that I have given Gull Realty Inc an exclusive listing on my  
 Property located at 93 WILSON ST., Long Beach, a copy

of which is attached hereto

Purchase Price of Four Hundred Thirty Nine ThousandCommission of 4.5 will be paid by Owner at closing.

I would also like for Gull Realty Inc., to put my listing on MLS after my exclusive  
 has expired. 5% If on 800 L.S.

Sept 30th 2007

(Owner)

(Owner) EDWARD N. TOBIAS

The exclusive listing runs from \_\_\_\_\_ to \_\_\_\_\_

(Owner)

(Owner)

\_\_\_\_\_  
Listing Agent

Pg 61 of 149  
 Prepared by Fran Adelson  
 RE/MAX Sea City Realty  
 6/28/2005 2:28:02 PM



**93 Wisconsin St**  
**Long Beach, NY 11561**  
**\$399,000**

Ranch  
 West End  
 Cross St: W.Beech  
 1 Family Det

Rooms: 8  
 Bedrooms: 3  
 Baths Full: 2  
 Baths Half: 0  
 Baths Total: 2  
 Last Status Change: PC

ML#: 1694294

Owner: Gutierrez

Coldwell Banker Beach West Rlt 516-889-7500

Approx Year Built: 1926 New Const: N  
 Garage: 0  
 Driveway: N  
 Basement: Crawl Finished: N  
 # Kitchens: 1  
 Eat In Kitchen: Y  
 Dining Room: Lr/Dr  
 Den/Family Room: N  
 Office: N  
 Attic: Y  
 Construction: Shingle  
 Appearance: Excellent  
 Porch:  
 Patio:  
 Deck:  
 Pool: N  
 Tennis Court:  
 Tennis Court Desc:  
 Inground Sprinklers:  
 Also for Rent: N Price:

W/W Carpet: Y  
 Stove: 1  
 Refrigerator: 1  
 Washer: 0  
 Dryer: 0  
 Dishwasher: 0  
 A/C: N  
 # Fireplaces: 0  
 Skylight:  
 Water: Public  
 Sewer: Y  
 Fuel: Gas  
 Heat: Hw  
 # Heating Zones: 1  
 Sep HW Heater: Y  
 Approx Int SqFt:  
 Rent Income:

School District: 28  
 Long Beach  
 Taxes: \$4,762  
 Add'l Village Taxes:  
 Total Value: \$2,750  
 Lot Size: 30X60  
 Lot Square Footage: 1800  
 Building Size:  
 Cul-de-sac:  
 Waterfront: N  
 Waterview: N  
 Water Frontage:  
 Docking Rights:  
 Beach Rights:  
 Bulkhead: N  
 Section: 00059  
 Lot: 0000330  
 Block: 0023400  
 District: 0000  
 Zoning:

Bsm/Subfl: Crawl, New Gas Burner

1st Floor: Lr/Da, 3Brs, 2Bths, Kit

2nd Floor:

3rd Floor:

Handicap Access:

394  
 390  
 384.5  
 375  
 388  
 386  
 7-10-05

Supersedes ML#:

Mortgage Balance: \$0

Eq. Lvy: \$399,000

Interest Rate%:

Assumable:

Fixed Rate:

Owner Financing:

Principal, Interest &amp; Taxes:

Years To Go:

Remarks: Walk To Beach, Shops, School. Seller Very Motivated!!! Owner Wants To Hear All Offers!

Directions: West End

Property Description: This Lovely Ranch is Close To Beach, Shops, Restaurants, Schools. New Kitchen And Bth. New Gas Burner. Seller Motivated.

Personal Property Exclusion:

Broker Open House Date:

Time:

Note:

Consumer Open House Date: 6/26/2005 - 6/26/2005

Time: 12:00-2:00

Note: Agents, Bring Your Buyers Tool

Listing Date: 4/11/2005

Listing Agent: Spero, John J 516-889-7500

Buyer Exclusions: N

Exp Date: 4/11/2006

Co-List Agent:

Foreclosure: N

Occupancy: Ot

Owner Phone#: 516-889-7500

Negotiate Direct: N

Original \$: \$419,990

Show Instr: Call For Key

Selling Broker Comm: 2 %

Prior Listing \$: \$409,000

LockBox:

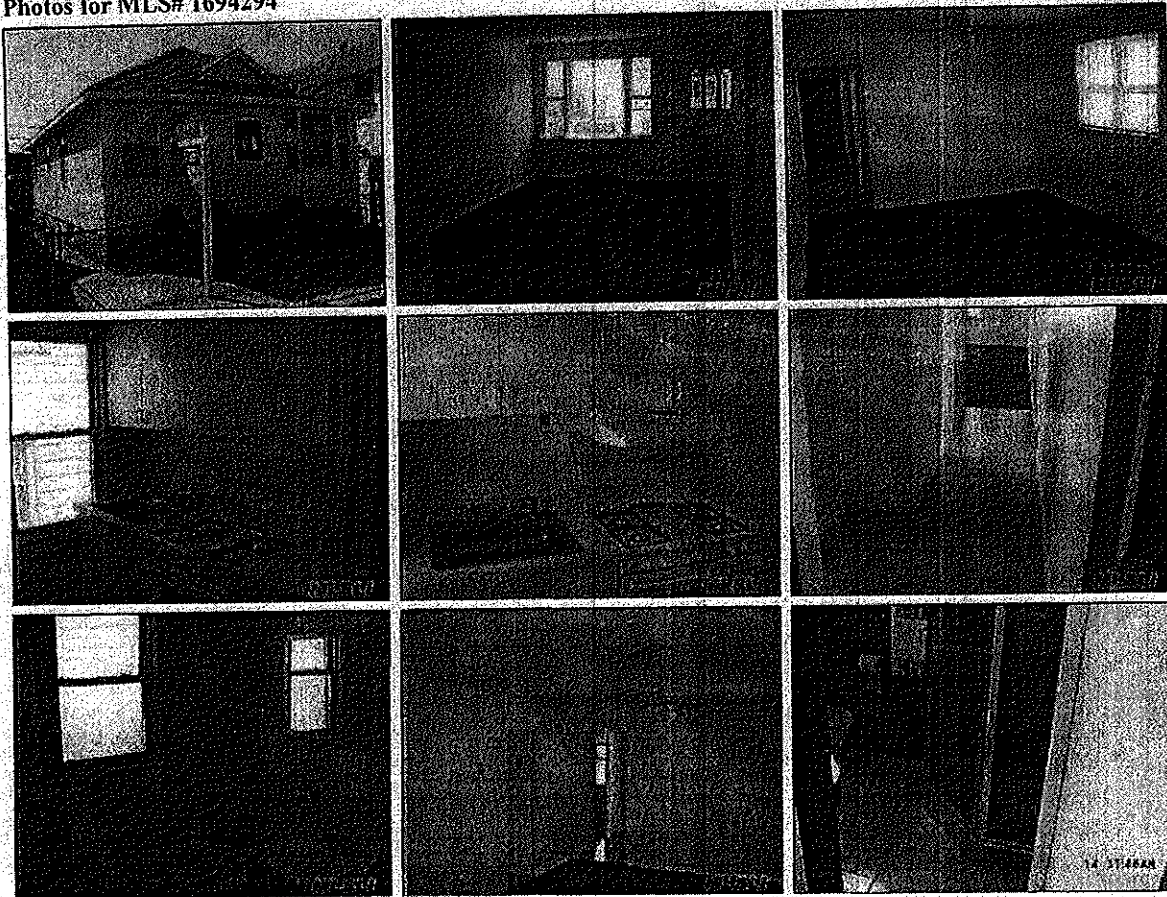
Buying Broker Comm: 0

Code/Branch: BECH 01

Renting Broker Comm:

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Photos for MLS# 1694294



**BLANK ROME LLP**

*A Pennsylvania LLP*

MICHAEL P. TRAINOR, ESQUIRE

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(609) 750-7700

*Attorneys for Defendants William C.*

*Erbey, Ocwen Financial*

*Corporation, Ocwen Loan Servicing,*

*LLC, and GMAC Mortgage, LLC*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

Edward N. Tobias and Suzanne M. Koegler,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

CIVIL ACTION

DOCKET NO.: 3-13-cv-6471

**NOTICE OF MOTION TO DISMISS**

TO: Edward N. Tobias  
Suzanne M. Koegler  
Law Offices of Edward N. Tobias  
226 Richwood Road  
Mullica Hill, NJ 08062

**PLEASE TAKE NOTICE** that on February 3, 2014, or as soon thereafter as counsel may be heard, the undersigned attorney for Defendants William C. Erbey, Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and GMAC Mortgage, LLC (the "Moving Defendants") will move before the Honorable Tonianne J. Bongiovanni for an Order dismissing Plaintiffs' claims against the Moving Defendants Pursuant to Fed. R. Civ. P. 12(b)(6), or, in the Alternative, Motion for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e).

**PLEASE TAKE FURTHER NOTICE** that Plaintiff will rely upon its Brief submitted herewith. A proposed form of Order is also enclosed.

Oral Argument is requested only if opposition papers are timely filed and served.

**BLANK ROME LLP**  
A Pennsylvania LLP

Dated: December 26, 2013

Michael P. Trainor /s/  
Michael P. Trainor, Esquire  
*Attorney for Defendants William C. Erbey,  
Ocwen Financial Corporation, Ocwen Loan  
Servicing, LLC, and GMAC Mortgage, LLC*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Edward N. Tobias and Suzanne M. Koegler,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

CIVIL ACTION

DOCKET NO.: 3-13-cv-6471

Order

THIS MATTER, having been opened to the Court upon the motion of Defendants, William C. Erbey, Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and GMAC Mortgage, LLC ("Moving Defendants"), and the Court having considered Moving Defendants' Motion to Dismiss Plaintiff's Claims Against Moving Defendants Pursuant to Fed. R. Civ. P. 12(b)(6), and the Court having considered any opposition thereto, for good cause shown it is hereby **ORDERED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2014 as follows:

Defendants' Motion to Dismiss, shall be, and hereby is, **GRANTED** in its entirety;

All of Plaintiffs' claims against Moving Defendants are hereby dismissed, with prejudice;

and

A copy of this Order shall be served upon all parties within seven (7) days of receipt.

\_\_\_\_\_  
J.

**BLANK ROME LLP**

*A Pennsylvania LLP*

Michael P. Trainor

NJ Attorney ID # 2932010

301 Carnegie Center – 3<sup>rd</sup> Floor

Princeton, NJ 08540

(609) 750-7700

*Attorney for Defendants William C. Erbey,  
Ocwen Financial Corporation, Ocwen Loan  
Servicing, LLC, and GMAC Mortgage, LLC*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

Edward N. Tobias and Suzanne M.  
Koegler,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

CIVIL ACTION

DOCKET NO.: 3:13-cv-06471

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**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO  
DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6), OR, IN THE ALTERNATIVE, FOR  
A MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)**

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**On the Brief**

Michael P. Trainor

## TABLE OF CONTENTS

	<b>Page</b>
PRELIMINARY STATEMENT .....	1
FACTUAL BACKGROUND .....	1
LEGAL ARGUMENT.....	2
I.        Standard of Review for a Motion To Dismiss Pursuant To Rule 12(b)(6) .....	2
II.       Plaintiffs' Claim Against Erbey, Ocwen, and GMAC Must Be Dismissed Because Plaintiffs Set Forth Neither a Legal Theory For Relief nor a Statement of Facts Demonstrating Any Right to Relief. ....	4
A.      Plaintiffs fail to set forth a legal theory under which relief may be granted. ....	4
B.      Plaintiffs fail to set forth a statement of facts to demonstrate Plaintiffs' right to any relief.....	5
III.      Moving Defendants Request a More Definite Statement of Plaintiffs' Claims.....	6
<u>CONCLUSION</u> .....	7



# **TABLE OF AUTHORITIES**

	Page(s)
<b>CASES</b>	
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	2, 3, 4
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	2, 3, 4
<i>Fowler v. UPMC Shadyside</i> , 578 F.3d 203 (3d Cir. 2009).....	3
<i>Maio v. Aetna, Inc.</i> , 221 F.3d 472 (3d Cir. 2000).....	3
<i>Morse v. Lower Merion Sch. Dist.</i> , 132 F.3d 902 (3d Cir. 1997).....	3
<i>Pension Benefit Guar. Corp. v. White Consol. Indus.</i> , 998 F.2d 1192 (3d Cir. 1993).....	3
<i>Phillips v. County of Allegheny</i> , 515 F.3d 224 (3d Cir. 2008).....	2, 3
<b>OTHER AUTHORITIES</b>	
Fed. R. Civ. P. 8(a) .....	3
Fed. R. Civ. P. 12(b)(6).....	2
Fed. R. Civ. P. 12(e) .....	6

### **PRELIMINARY STATEMENT**

Plaintiffs feebly attempt to assert a claim against Defendants William C. Erbey ("Erbey"), Ocwen Financial Corporation and Ocwen Loan Servicing, LLC (collectively, "Ocwen"), and GMAC Mortgage, LLC, incorrectly named as GMAC Mortgage Co., LLC ("GMAC") (collectively, Erbey, Ocwen and GMAC shall be referred to herein as the "Moving Defendants") that is built upon nothing more than bald assertions and sweeping legal conclusions, and is supported by no factual allegations.

Plaintiffs appear to allege that Moving Defendants engaged in some unspecified actions at some unspecified time and that such actions affected the value of three of Plaintiffs' residential properties. Plaintiffs also appear to allege that they sought assistance from Moving Defendants pursuant to certain unspecified mortgage terms and/or unspecified state or local programs, but that Moving Defendants "failed" according to the terms of the mortgage(s) and/or the unspecified state or federal programs to assist. While heavy on sweeping assertions and legal conclusions, Plaintiffs' claims are light on factual support and do not even identify the legal theory upon which Plaintiffs seek relief.

As such, Moving Defendants are left to guess as to the relevant legal theory for relief, what obligations Moving Defendants owed to Plaintiff, where those obligations derive from, what actions Moving Defendants allegedly did or did not take, and what about those actions or inactions was wrongful. In short, Plaintiffs provide a skeletal claim built from nothing more than bald assertion and conclusion and have left Moving Defendants to guess as to the factual underpinning, if any, of such claims.

### **FACTUAL BACKGROUND**

Plaintiffs instituted this action seeking, *inter alia*, payment relating to damage that was allegedly caused to the following three properties by Superstorm Sandy: (1) 93 Wisconsin Street,

Long Beach, NY; (2) 75 Princeton Oval, Freehold, NJ; and (3) 226 Richwood Road, Mullica Hill, NJ. *See* Compl. at Count III, ¶1. In their poorly constructed Complaint, Plaintiffs appear to set forth three causes of action. However, Plaintiffs only seek relief as to the Moving Defendants in their third “Count.” *See* Compl. at Count III.

In their third count, Plaintiffs baldly allege that the “defendants wrongfully engaged in illegal or other adverse action that negatively affected the nationwide real estate market resulting in untrue and inaccurate property values at the time the plaintiffs purchased the properties.” *See* Compl. at Count III, ¶2. Plaintiffs also baldly allege that the Moving Defendants “failed according to the terms of the mortgage contract” and that “third-party obligations imposed or entered into by them various federal and state programs to adequately compensate plaintiffs for damages sustained as a result of their wrongful acts.” *See* Compl. at Count III, ¶4. Despite these allegations, at no point do the Plaintiffs specify what actions Moving Defendants allegedly failed to take or how any such actions, or inaction, caused them damage. They also completely fail to set forth any specific legal theory upon which they claim to be entitled relief. As such, and for the reasons set forth more fully below, all of Plaintiffs’ claim against Moving Defendants must be dismissed.

### **LEGAL ARGUMENT**

#### **I. Standard of Review for a Motion To Dismiss Pursuant To Rule 12(b)(6)**

A complaint will survive a motion under Rule 12(b)(6) only if it states “sufficient factual allegations, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint must contain sufficient factual allegations to raise a right to relief above the speculative level, assuming the factual allegations are true. *Twombly*, 550 U.S. at 555; *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008).

The Supreme Court has made clear that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original); see also *Iqbal*, 556 U.S. at 679 (“While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.”). Thus, conclusory allegations of law, inferences unsupported by facts, or a formulaic recitation of the elements will not defeat a Rule 12(b)(6) motion. *Id.*; *Twombly*, 550 U.S. at 555. While a court will accept well-pled allegations as true for the purposes of the motion, it will not accept bald assertions, unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations. *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

The Third Circuit, following *Twombly* and *Iqbal*, has held that the pleading standard of Rule 8(a) “requires not merely a short and plain statement, but instead mandates a statement ‘showing that the pleader is entitled to relief.’” *Phillips*, 515 F.3d at 234. In a Rule 12(b)(6) motion, the Court is limited in its review to a few basic documents: the complaint, exhibits attached to the complaint, matters of public record, and undisputedly authentic documents if the complainant’s claims are based upon those documents. See *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). A court need not accept bald assertions, unwarranted inferences or legal conclusions. *Maio v. Aetna, Inc.*, 221 F.3d 472, 485 n.12 (3d Cir. 2000). In deciding whether to dismiss a complaint, courts must separate the legal elements and factual allegations of the claim, accepting the well-pleaded facts but disregarding the legal conclusion. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009).

**II. Plaintiffs' Claim Against Moving Defendants Must Be Dismissed Because Plaintiffs Fail to Set Forth a Legal Theory For Relief And Fail To Provide Any Facts Supporting Their Requested Relief.**

Plaintiffs' claim against Moving Defendants should be dismissed because Plaintiffs have failed to plead a statement of facts demonstrating that Plaintiffs are entitled to any relief. Plaintiffs also fail to identify a legal theory upon which they could be entitled to relief. As such, Plaintiffs' claim fails to meet the pleading standard set forth in *Iqbal* and *Twombly*.

**A. Plaintiffs Fail to Set Forth a Legal Theory Under Which Relief May be Granted.**

Plaintiffs' Complaint appears to make only two sets of broad, non-specific, conclusory allegations against Moving Defendants. First, Plaintiffs state that "[D]efendants wrongfully engaged in illegal or other adverse actions that negatively affected the nationwide real estate market" and suggest that Defendants' unspecified actions skewed the value of Plaintiffs' properties. *See* Compl. at Count III, ¶ 2. Despite this bald allegation, Plaintiffs completely fail to identify any law or legal doctrine that could remotely provide Plaintiffs with a right to relief and no such law or doctrine is apparent on the face of the Complaint.

Second, Plaintiffs state that they sought assistance "according to the terms of the mortgage" and "obligations accepted by [D]efendants under various federal and state programs dealing with the 'mortgage crisis,'" but that Defendants "failed" according to those terms and programs.<sup>1</sup> *See* Compl. at Count III, ¶¶ 3-4. Nowhere in the Complaint do Plaintiffs explain which specific mortgage(s) were violated nor do they specify which terms of any such

---

<sup>1</sup> Similar to the entirety of Plaintiffs' Complaint, the language of Paragraph 4 is unclear. It may be that Plaintiffs mean that the "various federal and state programs" they reference were established to adequately compensate plaintiffs for damages sustained as a result of their alleged wrongful acts. If so, Plaintiffs' allegation that "Defendants failed" according to those programs is nebulous at best. It may also be that Plaintiffs meant that "Defendants failed ... to adequately compensate Plaintiffs for damages sustained as a result of their wrongful acts." Neither reading of this paragraph constitutes a well-pleaded allegation to support Plaintiffs' claim. Further, Moving Defendants should not be forced to guess as to what allegations are being set forth against them.

mortgage(s) impose obligations on the Moving Defendants. Plaintiffs also completely fail to state, even in general terms, what sort of obligations are imposed by these unspecified mortgage terms. Likewise, Plaintiffs fail to identify which state and federal programs impose obligations on the Moving Defendants and what obligations are imposed upon Moving Defendants by those unspecified state and federal programs.

Without identifying the terms of the mortgage(s) or the specific state or federal program(s) that have been allegedly violated, Plaintiffs have completely failed to bring a cause of action against Moving Defendants. In short, Plaintiffs fail to set forth a single specific legal theory to justify their request for relief. Without knowing the legal basis upon which Plaintiffs attempt to assert their claims, Moving Defendants cannot possibly defend themselves from Plaintiffs' conclusory allegations. Thus, Plaintiffs' claim against Moving Defendants must be dismissed.

**B. Plaintiffs Fail to Set Forth a Statement of Facts to Demonstrate Plaintiffs' Right to Relief.**

In addition to failing to identify a legal theory, Plaintiffs also fail to provide *any* statement of facts demonstrating a plausible right to relief. Plaintiffs' assertion that Moving Defendants "negatively affected the nationwide real estate market" is a bald, conclusory allegation. *See* Compl. at Count III, ¶ 2. Plaintiffs do not identify a single action that Moving Defendants took to bring about the result that Plaintiffs assert. Nor do Plaintiffs provide a plausible explanation for how Moving Defendants' unspecified actions brought about the asserted result.

Plaintiffs also baldly assert that "Defendants failed according to the terms of the mortgage contract and third-party obligations imposed or entered into by them various federal and state programs." *See* Compl. at Count III, ¶ 4. However, Plaintiffs never identify what

actions or inactions constitute Moving Defendants' alleged failure or what it was that Moving Defendants "failed" to do. As such, Count III of Plaintiffs' Complaint lacks sufficient factual allegations to demonstrate a plausible right to relief and must be dismissed as to Moving Defendants.

**IN THE ALTERNATIVE**  
**MOTION FOR MORE DEFINITE STATEMENT PURSUANT TO FED.R.CIV.P. 12e**

**III. Moving Defendants Request a More Definite Statement of Plaintiffs' Claims.**

Pursuant to Fed. R. Civ. P. 12(e), a "party may move for a more definite statement of a pleading...which is so vague or ambiguous that the party cannot reasonably prepare a response." As discussed above, Plaintiffs baldly state that certain terms of unspecified mortgages and/or certain federal or state programs allegedly impose certain obligations and require certain unspecified actions of Moving Defendants. *See* Compl. at Count III, ¶¶ 3-4. However, Plaintiffs do not identify the specific terms of the mortgage(s), the specific federal or state programs, or the specific obligations that Moving Defendants are alleged to have violated. As such, Moving Defendants cannot reasonably defend themselves against any allegations set forth by Plaintiffs. Additionally, Plaintiffs assert that certain unspecified actions by Moving Defendants were "illegal" or "unlawful," and "negatively affected" the nationwide real estate market. *See* Compl. at Count III, ¶ 2. Moving Defendants cannot reasonably respond to such allegations without further clarification of what actions Moving Defendants allegedly took and how those actions were illegal or unlawful.

Therefore, to the extent this Court does not grant the Moving Defendants' Motion to Dismiss, Moving Defendants request that Plaintiffs be ordered to amend their Complaint to provide a more definite statement of their claim(s).

### **CONCLUSION**

For the reasons set forth above, Moving Defendants respectfully request that all claims asserted against them by Plaintiff be dismissed, with prejudice. In the alternative, Moving Defendants request that the Plaintiffs be ordered to amend their Complaint to provide a more definite statement of the allegations that are being asserted against Moving Defendants.

Respectfully Submitted,

Dated: December 26, 2013

Michael P. Trainor /s/  
Michael P. Trainor, Esquire  
**Blank Rome LLP**  
One Logan Square  
Philadelphia, PA 19103  
(215) 569-5500  
*Attorney for Defendants Erbey,  
Ocwen, and GMAC*



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Edward N. Tobias and Suzanne M. Koegler,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

CIVIL ACTION

DOCKET NO.: 3-13-cv-6471

**Certificate of Service**

I hereby certify that I have this \_\_\_\_\_ day of December, 2013, caused a true and correct copy of Defendants' Motion to Dismiss Plaintiff's Claims Against Moving Defendants Pursuant to Fed. R. Civ. P. 12(b)(6), Defendants' Brief in Support, and Order to be served on the following by first-class mail, postage prepaid:

Edward N. Tobias  
Suzanne M. Koegler  
Law Offices of Edward N. Tobias  
226 Richwood Road  
Mullica Hill, NJ 08062

Michael P. Trainor /s/  
Michael P. Trainor, Esquire

**Law Offices of Edward N. Tobias, L.L.C.**

**226 Richwood Road  
Mullica Hill, NJ 08062  
Tel./Fax (732) 766-3903**

[www.tobiaslaw.com](http://www.tobiaslaw.com)

January 7, 2014

Hon. Joel A. Pisano  
Clarkson S. Fisher U.S. Courthouse  
402 East State Street  
Room 2020  
Trenton, NJ 08608

Filed Electronically

Re: Tobias v. USA, et al.  
Civil Action No.: 3:13-cv-06471-JAP-TJB

Dear Judge Pisano:

This office, representing the Plaintiffs, Edward N. Tobias, pro se, and Suzanne M. Koegler, in the above matter, is in receipt of Defendants' William C. Erbey, Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and GMAC Mortgage, LLC (the "Moving Defendants") Motion to Dismiss Plaintiffs' Claims or, in the alternative, Motion for More Definite Statement in the above-referenced matter. Please consider this letter-brief in lieu of a more formal response to Moving Defendants' Motion.

**Preliminary Statement**

The Complaint in this matter, albeit "poorly constructed" as characterized by Defendants' attorney, does state numerous factual allegations regarding the events leading to Plaintiffs' loss for which they are seeking redress. An Answer to the Complaint and Discovery are necessary to determine the evidentiary basis to support Plaintiffs' allegations. Counts 2, 3, and 4 are hereby amended to provide additional factual

allegations and more specific legal theory for relief. Documentation not attached to the original Complaint, (e.g. matters of public record and documents hereby certified to be authentic by the Plaintiff (See *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3rd Cir. 1993))) is provided to assist the Court in its limited review of this Rule 12(b)(6) motion. Such documentation of these factual allegations is sufficient to meet the standard to survive a motion under Rule 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Count 2:

By way of further factual information to the Court, the substance of which should be also known by the moving defendants through a review of their corporate records, the property was purchased by the plaintiffs on September 2, 2005 for a price of \$386,000.00; a purchase money mortgage and note were given to GMAC Mortgage, LLC. in the amount of \$299,000.00, with the amount of \$87,000.00 paid as down payment by the Plaintiffs. According to Defendant GMAC Mortgage, LLC, the original appraised home value was \$390,000.00 and, as of October 2, 2007, was purported to have an estimated value of \$422,000.00 with a total estimated equity of \$130,957.00. (See Ex. A). The purpose of this document was plainly to induce Plaintiffs to enter into further transactions with Defendant, whether to refinance, increase the outstanding loan, or utilize the available stated equity to borrow additional money from Defendant, based on the fraudulent valuation stated. Upon review of the attached correspondence between Plaintiffs and the Moving Defendants, coupled with the myriad litigation and public records surrounding the events leading to the recent mortgage crisis, it is disingenuous of the Moving Defendants to claim to be unaware of what obligations they owe to Plaintiffs

and where those obligations derive from. Whether they wrongfully failed to meet these obligations is for the finder of fact to decide. Plaintiffs were damaged by Defendants' market manipulations resulting in inflated market values at the time of purchase. The ongoing fraud upon the market, eventually led to Plaintiffs' total loss of their investment in the property. Accordingly, Count 2 of the Complaint is more specifically plead as requesting relief against Defendant, GMAC Mortgage, LLC on the basis of fraud, whether by common law, state law, or federal law as discovery in this matter should evidence.

Count 3:

Prior to the instant litigation, GMAC Mortgage, LLC declared bankruptcy and its assets held by Residential Capital, LLC (ResCap Bankruptcy). At the time of the bankruptcy of GMAC Mortgage, LLC, this entity owned two loans related to Plaintiffs' properties at 75 Princeton Oval, Freehold, NJ and 93 Wisconsin St., Long Beach, NY. On information and belief, a portion of the assets owned by GMAC Mortgage, LLC and held by Residential Capital, LLC, including the loan related to 93 Wisconsin St., were purchased by Ocwen Financial Corporation and/or Ocwen Loan Servicing, LLC (Ocwen). (See Ex. B). On information and belief, a portion of the assets owned by GMAC Mortgage, LLC and held by Residential Capital, LLC including the loan related to 75 Princeton Oval, were purchased by Greentree Servicing, LLC. Plaintiffs had diligently paid the monthly mortgage payments on each property until such time as Plaintiffs requested from GMAC Mortgage, LLC a forbearance of the 93 Wisconsin St. loan based on the events of Superstorm Sandy. Notwithstanding the diligent repayment of this loan by Plaintiffs, upon information and belief, Plaintiffs allege that GMAC

Mortgage, LLC fraudulently mischaracterized the 93 Wisconsin St. loan as non-performing such that Ocwen may have been able to purchase this loan at an unfair discount resulting in an improper windfall for this Defendant during the short time this loan was held by Ocwen. Further discovery is necessary in order to determine the basis on which these two loans were separated to be sold to two different purchasers, whether Ocwen, as a sophisticated entity specializing in such transactions, was aware of such fraudulent or otherwise wrongful acts, and if this separation resulted in damage to Plaintiffs, either in their role as borrower homeowners, or as shareholders of GM in bankruptcy, which had an ownership interest in Defendant GMAC Mortgage, LLC. Additionally, a duty to safeguard the funds paid by Plaintiffs in full satisfaction of the loan on 93 Wisconsin St. to the extent that Plaintiffs are entitled to a refund thereof on the basis of Defendants' wrongful acts.

Subsequently, based on the substantially diminished value of the property, Plaintiffs requested and returned a "Borrowers Response Package" requesting a possible short sale and loan modification review. (See Ex. C without confidential financial information originally attached). Plaintiffs never received a response from GMAC Mortgage, LLC and instead found that this loan had been sold to Ocwen. Ocwen was notified of the Borrowers Response Package to GMAC Mortgage, LLC. requesting loan modification (See Ex. D); however Ocwen took no further action regarding this request until Plaintiffs were notified that, according to Ocwen, the "Modification [was] terminated per customer's request". (See Ex. E). Plaintiffs deny that they requested this termination. Complaints regarding wrongful denials of loan modification requests are administered by the New York State Banking Department, which mandates that the

"Servicer has a duty of good faith and fair dealing in its communications, transactions, and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan." NYS Banking Law Article 12-D: Business Conduct Rules for Mortgage Loan Servicers (Part 419.2). Defendants' obligations to third parties under Home Affordable Modification Program (HAMP) and the Home Affordable Refinance Program (HARP) (authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, which has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009 (collectively "The Acts")) are unsettled. Accordingly, Count 3 is more specifically plead as requesting relief against the Moving Defendants under NYS Banking Law and HAMP and HARP to the extent Defendant owes duties to third parties such as Plaintiffs.

Count 4

With regard to Count 4 of the Complaint, attached please find Plaintiffs' letters to Defendant, dated April 25, 2013 and May 20, 2013. (See Ex. F and Ex. G). These documents state the basis of Plaintiffs contractual dispute with defendant, Ocwen Loan Servicing, LLC regarding their obligations according to the terms of the mortgage contract. Defendants breached the mortgage terms by wrongfully withholding application of the insurance proceeds to principal repayment such that Plaintiffs could proceed with appropriate disposition of the property. Documents already in the possession of Defendants will also show that the payments in forbearance were paid in a timely manner (See Ex. H advising that any unpaid amount is due at the end of the forbearance period) and this loan was paid in full upon sale of the property in its damaged "as is" condition. Upon the lump sum payment of the outstanding mortgage payments in forbearance and

notification that a contract for sale had finally been signed that could pay off the loan (See Ex. I), Defendant Ocwen determined that this "Borrower is no longer interested in a short sale." (See Ex. J). In reviewing the history of the real estate market in Long Beach, NY, it is apparent that Defendants unreasonable delay in responding to Plaintiffs' request for short sale was only fortuitously mitigated by a market rebound lasting an agonizing nine months. Accordingly, Count 3 of the Complaint is more specifically plead as requesting relief against Defendants, GMAC Mortgage, LLC and Ocwen on the basis of breach of contract and tortious interference with contract as discovery in this matter should evidence.

#### Legal Argument and Conclusion

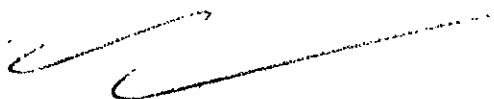
A motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all well pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief. *Bartholomew v. Fischl*, 782 F.2d 1148, 1152 (3rd Cir.1986). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974). See also *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434-35 (3d Cir. 1997). The parties have not yet had the opportunity to exchange discovery in this matter and Plaintiffs strongly deny that this litigation was commenced frivolously or for any purpose of a "fishing expedition." As homeowners with a verifiable loss from this real estate transaction, Plaintiffs are entitled to reasonably investigate the role Defendants played in this loss. My review of public records available related to the Moving Defendants" and allegations made by others in ongoing litigation are the initial basis for my assertion that

they engaged in illegal or other adverse actions that resulted in an untrue and inaccurate value for the property located at 93 Wisconsin St., Long Beach, NY and the subsequent financial loss suffered by the Plaintiffs when faced with the unfortunate circumstances of Superstorm Sandy. Ocwen's own letterhead states "Helping Homeowners is What We Do!" The delay and obfuscation engaged in by Ocwen has done little to help the homeowners in this instant matter. An Answer to the Complaint and further discovery is necessary to substantiate further legal theory or theories under which Plaintiffs are entitled to relief.

For the foregoing reasons, Plaintiffs respectfully requests that the present motion be denied and that Moving Defendants' provide an Answer to Plaintiffs' Complaint.

Respectfully Submitted,

LAW OFFICES OF EDWARD N. TOBIAS, L.L.C.



---

By: Edward N. Tobias, Esq.

Dated: January 7, 2014



# SmartWatch

**Customer Relationship Group  
7 Carnegie Plaza  
Cherry Hill, NJ 08003-1020**

**October 10, 2007**

**XX**

**Suzanne Koegler  
Edward Tobias  
75 Princeton Oval  
Freehold, NJ 07728-5352**

**Wiederholungsfragen**

Dear Suzanne and Edward,

**It's a pleasure to have you as a GMAC Mortgage, LLC customer. Here's hoping that you're reaching all of the goals you've set for yourself and your family this year.**

**This SmartWatch® report is a confidential and comprehensive summary of your GMAC Mortgage account. In your report, you'll find the latest snapshot of your account activity as well as valuable information you can use to:**

- **Get cash out of your home**
- **Lower your monthly payment**
- **Save money over the life of your loan**
- **Buy your next home**

**Log on to SmartWatch Online to get even more from your report.**

Just visit [gmacmortgage.com](http://gmacmortgage.com), log on to your account, click on the SmartWatch logo, and you're ready to go. With SmartWatch Online, you can access daily rate updates, tailor property value information and home equity balances to reflect your current situation — and much more. It's a great resource that can help you make timely and smart decisions relating to your mortgage and other financing needs.

## Ready to buy a new home?

**We want to keep your business when you move. Recent rates on 30 year fixed-rate mortgages have been as low as 5.750% interest (5.976% APR).<sup>\*\*</sup> Call today to learn more about discounts and benefits such as cash back on the purchase or sales price of your home and closing cost or interest rate discounts.**

**GMAC Mortgage is here to help.**

**For questions about your SmartWatch report or anything to do with your GMAC Mortgage account, please call the SmartWatch Center at 1-866-578-7997. We're at your service.**

Sincerely,

Tom

**Tom Evich**  
**Vice President**

**P.S. No matter what you need — to get cash out of your home, to lower your monthly payments, or to save money over the life of your loan — we are here to help. Call us at 1-866-578-7997.**

**SMARTWATCH®  
SAVINGS ALERT**

**If you are planning a move  
we can really help.**

- **Your Personal Move Consultant** can show you how to get hundreds in cash back savings! Get \$3 cash back for every \$1,000 of your new home's purchase/sales price when you use an affiliated real estate broker.<sup>†</sup>

- Rates as low as 5.750% interest (5.976% APR)\*\*

- **SAVE \$500 ON CLOSING COSTS OR GET 1/8% OFF YOUR INTEREST RATE\***

**Call the  
SmartWatch Center at  
1-866-578-7997  
or visit  
gmacmortgage.com**

"A"

## Your SmartWatch Report.

No matter what plans you have (or don't have) for your home, the information we've provided is to help you make smart financing decisions.

### Your current loan information as of: 10/02/2007

Property: 93 Wisconsin St.  
Long Beach, NY 11561-1421

Loan #: 0685483862

Loan type: 30 Year Fixed Rate

Rate: 5.500%

Monthly payment: \$1,697.69 (Principal and interest only)

Approximate principal balance<sup>1</sup>: \$291,043.20

Remaining term: 336 months

Adjusted remaining term: 336 months  
(After pre-paid principal or extra payments, for example.)

Original appraised home value:  
\$390,000.00

Estimated current value<sup>2</sup>: \$422,000.00

Total estimated equity<sup>2</sup>: \$130,957.00

### Goal: Get cash now.

- **Do a "cash out" refinance** with a new 30 Year Fixed Rate mortgage and assuming a rate of 6.375% (6.597% APR).<sup>3</sup>

**Get up to \$88,757 cash.** If you choose the maximum amount, your monthly payment (principal and interest) would be about \$2,369.

- **Do a "cash out" refinance with the same or lower payment** (principal and interest), with a new 30 Year Fixed Rate mortgage, and assuming a rate of 6.375% (6.523% APR).<sup>3</sup>

A 'cash-out' refinance, for the same payment you have today, may not make sense for you now. Please call us for more information.

- **Get a home equity loan or line of credit.**<sup>4</sup>

**Get \$46,557 to \$130,957.** This is the potential amount of equity available for a home equity loan or line of credit, and represents 80% to 100% of your estimated equity. (The actual amount you can borrow depends on various factors. Call for more information.)

### Goal: Lower your monthly payment.

- **Refinance your current balance** with a 30 Year Fixed Rate loan and assuming a rate of 6.375% (6.523% APR).<sup>3</sup>

**You're already in good shape**, because your rate is about the same as or better than today's rate.

- **Refinance and change to a 15 Year Fixed Rate loan** and assuming a rate of 6.125% (6.364% APR).<sup>3</sup>

**No monthly savings.** If you switched to a 15 Year Fixed Rate mortgage, your monthly payment (principal and interest) would actually go UP by about \$778 per month. You may achieve significant savings, however, over the life of your loan. See G on the next page.

## Goal: Save over the life of your loan.

- **Refinance your current balance** with a 30 Year Fixed Rate and assuming a rate of 6.375% (6.523% APR).<sup>3</sup>

**No long-term savings.** You would actually pay \$83,239 MORE than your current loan. You may, however, lower your monthly payment. See D on the previous page.
- **Refinance and change to a 15 Year Fixed Rate loan** and assuming a rate of 6.125% (6.364% APR).<sup>3</sup>

**\$124,800 life-of-loan savings.** Your monthly payment (principal and interest) would be about \$2,476.
- **Get an Instant Decision on a GMAC Mortgage Equity Rewards Card<sup>SM</sup>**, the MasterCard<sup>®</sup> credit card that helps pay down your mortgage!<sup>5</sup>

**Every Purchase you make pays down your mortgage!** For every \$1 you charge to the card, you earn one point. Each time you earn 2,500 points, \$25 will be applied to your GMAC Mortgage balance automatically on a quarterly basis. Call 1.800.821.8758 to apply now!

## Goal: Buy your next home.

- **Available equity for down payment.** The estimated amount you would have for a new home down payment from the sale of your existing home.<sup>6</sup>

**\$105,637.** This figure represents 94% of your estimated equity, based on your loan balance and approximate home value less 6% Real Estate commission.
- **Lock In your rate for up to 60 days. Think of it as protection against rising rates.**<sup>7,8,9</sup>

After you have an agreement of sale on your new home, simply request your rate lock when you submit your mortgage application. If we don't meet your closing date, we'll give you \$250.
- **Real Estate Cash Back Offer.** Advance registration is required and certain restrictions apply. Not available in all states. Call 1.877.531.4622 for more information or to register.<sup>10</sup>

**Get \$3 cash back per \$1,000** of the sale price and/or purchase price of your home when you sell or buy through our affiliated nationwide network of real estate brokers.

### Surprised about your equity?

As home values change, you may have much more equity than you realized. This may make it a good time to sell if you've been considering a move.

## Questions?

Just call the SmartWatch Center at 866-578-7997

These examples are based on mortgage rates as of 10/02/2007

# SmartWatch

## Footnotes and disclosures for Letter

- \* Closing Cost Discount / Interest Rate Reduction. Interest rate reduction or closing cost discount offer valid on your next first lien home purchase mortgage loan with GMAC Mortgage, LLC and is subject to underwriting approval and program guidelines. If you select the closing cost discount then a \$500 closing credit will be provided at loan closing. If the interest rate discount option is selected, the rate reduction will be applied toward the current market rate for the loan program selected at the time of the interest rate lock-in. The rate reduction cannot be combined with any special rate promotion. Only one closing cost credit or interest rate discount per loan transaction. For example, on a purchase price of \$315,000 with \$250,000 financed for a term of 30 years at a fixed interest rate of 6.750% (6.813% APR) would result in 360 monthly principal and interest payments of \$1621. With a 1/8% reduction in rate, a \$250,000 loan amount financed for a term of 30 years at an interest rate of 6.625% (6.688% APR) would result in 360 monthly principal and interest payments of \$1601. Taxes and insurance are extra. Fees and charges apply and may vary by state. Rate is for example only and is not necessarily reflective of the current market rate. Call for current rate information and information on fees and charges. In order to receive the discount, you must call the number listed on this letter and mention the offer at the time of application. Not all loan programs qualify.
- \* Cash-back offer may be limited or prohibited by law in some states and is not available in those states. Location of property being purchased or sold determines applicable state law. Cash-back offer not available in a number of states, including the following: Alaska, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Jersey, Oklahoma, Oregon, Tennessee and West Virginia. You must contact GMAC Home Services before contacting a real estate broker. Cash-back is based on the purchase/sale price of the home. Allow 30 days after closing for cash-back to be awarded. If your home is already listed, or you are currently working with a real estate agent, this is not a solicitation for business. Real estate services provided by GMAC Home Services.
- \*\* Subject to underwriting approval. Application required; not all applicants will be approved. Full documentation & property insurance required. Loan secured by a lien against your property. Terms, conditions & restrictions apply. Fees & charges apply and may vary by state. Offer assumes a loan amount of \$251,000 or above, downpayment of 20% or greater, and a credit score of 731 or above. For example, as of 10/2/2007, a \$251,000 loan amount financed at 5.750% interest (5.976% APR) for 30 years would result in 360 monthly principal and interest payments of \$1,464.77. Rate available on loan amounts up to \$417,000 (contiguous US) (\$625,500 in Alaska and Hawaii) on owner-occupied single-family residential properties. Recent rate but subject to change without notice. Your rate and term may vary. Call for details.

## Footnotes and disclosures for SmartWatch® Report

- 1 This is not an actual pay-off figure.
- 2 The estimated home value and equity stated in this report are approximations only and cannot be used in a loan application. For loans over one year in age, the estimated home value and equity are based on the use of an Automated Valuation Model (AVM). An AVM is produced by the use of a third party service provider which analyzes recent properties sold in your area to arrive at an estimated property value. If you wish to obtain new loan financing with GMAC Mortgage, LLC, a standard third party property appraisal report will be required which GMAC Mortgage, LLC will use in making a property underwriting decision. Please note that the results from a formal third party appraisal report may differ from the approximate property value assessed by the use of an AVM and may also differ from your home's original appraised value. This figure could change based on other liens of record and any change in market value of your property. Customers who have Private Mortgage Insurance (PMI) must get a full appraisal, not AVM to remove PMI.
- 3 Rate information contained in this refinance illustration reflects rates made available to GMAC Mortgage, LLC on a given date and are subject to change without notice and are based on borrower eligibility. Payment savings calculations are based on principal and interest only. Taxes and insurance are extra. Loans that exceed 80% of the property value may require private mortgage insurance which is not reflected in payment or savings amounts shown. Terms and conditions apply as well as closing costs. Be advised that applicants who are refinancing to a longer loan term in order to lower their monthly payment amount will see an increase in the total amount paid over the life of the loan. Availability of this program is subject to your submission of a formal loan application and approval. Please call for more information or to apply. As an example, a \$200,000 mortgage with a term of 30 years at a fixed interest rate of 6.5% (6.641% APR) would result in 360 monthly principal and interest payments of \$1,264.14. This example assumes \$2,900 closing costs paid in cash at closing. GMAC Mortgage provides several options for reduced and no-closing cost loans. This example does not include additional fees and charges required for most loans and assumes all closing costs are paid in cash at the time of closing.
- 4 Not available in all states.
- 5 There are fees associated with the Mortgage Accelerator program. Please call for more information.
- 6 Assumes borrower sells their current home and pays off their existing mortgage to obtain the down payment to purchase a new home. Programs may be available, subject to availability and borrower's qualification, to provide temporary financing for the purchase down payment until the existing home is sold.
- 7 Pre-approval is for credit purposes only and is not a commitment to lend. Contact a GMAC Mortgage, LLC representative for complete details.
- 8 Subject to state law, an up-front lock-in fee may be required. To the extent a lock-in fee is collected, you will have until the midpoint of the lock-in period to produce a fully executed agreement of sale for the purchase of a property. The new loan must close and fund prior to the expiration of the lock-in period. The lock-in fee is applicable to closing costs, but non-refundable subject to applicable state law.
- 9 Only one \$250 payment will be issued by GMAC Mortgage, LLC on any approved loan which does not close and fund by the date mutually agreed upon by the borrower(s) and GMAC Mortgage, LLC. The closing date is to be mutually agreed upon at the time of the rate lock agreement. If the guaranteed closing date is not met, refund requests must be made in writing from the borrower and should be forwarded to the originating loan officer. A check in the amount of \$250 made payable to the borrower(s) will be sent to the borrower(s) approximately 30 days from loan closing. This closing date guarantee does not apply if your closing is delayed by circumstances not within our control including, but not limited to: liens or other title defects affecting the property you are purchasing; loss of employment; closing date changes initiated by the buyer, seller or Realtor; failure to submit required information within 5 business days of our request; changes in the initial loan application or loan program due to events such as an inability to verify the property value, applicant's or the co-applicant's income; or requirements stipulated but not met within the sales agreement (e.g. termite certificate). Offer subject to approval. Terms may change. Contact a GMAC Mortgage, LLC representative for complete details.
- 10 Cash-back offer may be limited or prohibited by law in some states and is not available in those states. Location of property being purchased or sold determines applicable state law. Cash-back offer not available in a number of states, including the following: Alaska, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Jersey, Oklahoma, Oregon, Tennessee and West Virginia. You must contact GMAC Home Services before contacting a real estate broker. Cash-back is based on the purchase/sale price of the home. Allow 30 days after closing for cash-back to be awarded. If your home is already listed, or you are currently working with a real estate agent, this is not a solicitation for business. Real estate services provided by GMAC Home Services.
- 11 Call for details about our Express Purchase program for current customers. Not all borrowers will qualify for expedited processing.

\*\*\*GMAC Mortgage Construction Loans empowered by GMAC Bank. ©GMAC Bank Member FDIC and Equal Housing Lender.

NOTE: For all programs, terms and conditions apply and may change.

We make every effort to assure that the information provided is accurate as of the date we prepare the data for printing, but on rare occasions errors in our systems and printing may occur. If you believe there is an error in the information provided or to confirm this information, please contact us at the number on the front of this letter.

AZ Mortgage Banker License # BK-7670; Licensed by the Department of Corporations under the California Residential Mortgage Lending Act; Georgia Residential Mortgage License #5845; Illinois Residential Mortgage License; MA Mortgage Lender and Broker License #MC1556; MN: This is not an offer to enter into an agreement. Any such offer may only be made in accordance with Minn. Stat. Section 47.206 (3) and (4); Mississippi Licensed Mortgage Company; MT Licensed Broker License #000207; Licensed by the New Hampshire Banking Department; Licensed by the N.J. Department of Banking and Insurance; Licensed Mortgage Banker - NYS Banking Department; Licensed by the PA Dept. of Banking; Rhode Island Licensed Lender and Loan Broker; Licensed by the Virginia State Corporation Commission License # MLB-1435; GMAC Mortgage, LLC: 100 Witmer Rd. Horsham, PA 19044 (215-682-1000); 7 Carnegie Plaza, Suite 100, Cherry Hill, NJ 08003 (856-874-5584); 578 Veterans Memorial Highway, Hauppauge, NY 11788 (631-382-2499); Some loan products may not be available in all states.

©2007 GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation).



## **ResCap Completes Sale Of Servicing Platform Assets To Ocwen Loan Servicing, LLC**

**February 15, 2013 – NEW YORK** – Residential Capital, LLC (ResCap) has completed the sale of the servicing platform assets to Ocwen Loan Servicing, LLC, the mortgage servicing arm of Ocwen Financial Corporation. The United States Bankruptcy Court, Southern District of Manhattan had approved the sale of the assets last November.

"Today marks an important step in what has been a successful sale process for ResCap," said ResCap Chief Executive Officer Thomas Marano. "Since the Court's approval of the deal, our focus has been to ensure a smooth transition for homeowners and preserve value for our creditors."

The sale of ResCap's originations and capital markets platform to Walter Investment Management Corp., and the sale of a whole loan portfolio to Berkshire Hathaway were recently completed. The three sale transactions, in the aggregate, generated more than \$4 billion in proceeds for the benefit of ResCap's creditors and preserved more than 3,800 U.S. jobs.

"This complex transaction was settled in three components with three distinct purchasers, in cooperation with eight government agencies or regulatory authorities - all while keeping the business operating as a going concern," Marano said. "This successful outcome is a direct result of the hard work our employees, leadership and advisors have dedicated over the last year."

Centerview Partners LLC and FTI Consulting are acting as financial advisors to ResCap. Morrison & Foerster LLP is acting as legal advisor to ResCap. Morrison Cohen LLP is advising ResCap's independent directors.

### ***About Residential Capital (ResCap)***

Residential Capital, LLC was one of the largest originators, sellers and servicers of residential mortgage loans in the United States, conducting its mortgage operations in recent years through GMAC Mortgage, a wholly owned subsidiary that is not affiliated with General Motors. ResCap was the first mortgage servicer to complete and exceeded the consumer relief obligations as part of the National Mortgage Settlement, providing \$257.4 million in credited relief to borrowers across the nation. ResCap's executive offices are located in New York City, and most of its retained operations are in Fort Washington, Pennsylvania and Minneapolis, Minnesota.

### **Contacts**

Susan Fitzpatrick  
Director of Communications  
(215) 734-4400  
susan.fitzpatrick@gmacreacap.com

" 3 "



121202013021500000000010

**U.S. Bankruptcy Court Approves Sale of ResCap Mortgage Servicing and Origination Platform Assets to Ocwen and Walter Investment, and Sale of Whole Loan Portfolio to Berkshire Hathaway**

**November 21, 2012 – NEW YORK** – The United States Bankruptcy Court, Southern District of New York, has approved the sale of the Residential Capital, LLC's (ResCap) mortgage servicing and origination platform assets to Ocwen Loan Servicing, LLC and Walter Investment Management Corporation. The Court also approved the sale of ResCap's whole loan portfolio to Berkshire Hathaway. The case, number 12-12020 (MG), is presided over by the Honorable Judge Martin Glenn.

"We are very pleased to have obtained the Court's approval as it has resulted in the best possible outcome for our creditors," said ResCap Chief Executive Officer Thomas Marano. "Working closely with Berkshire Hathaway and both Ocwen and Walter Investment, the ResCap management team will create a smooth transition for our employees and ensure the servicing transfer is as seamless as possible for homeowners."

The Court-approved joint bid from Ocwen and Walter is a total purchase price of \$3 billion. The Court-approved bid from Berkshire Hathaway is a purchase price of \$1.5 billion for a loan portfolio made up of approximately 50,000 whole loans. The sale of the assets, subject to satisfaction of customary closing conditions including certain third party consents, is expected to close in the first quarter of 2013.

Centerview Partners LLC and FTI Consulting are acting as financial advisors to ResCap. Morrison & Foerster LLP is acting as legal advisor to ResCap. Morrison Cohen LLP is advising ResCap's independent directors.

***About Residential Capital (ResCap)***

Residential Capital, LLC is one of the largest originators, sellers and servicers of residential mortgage loans in the United States. ResCap is a wholly owned subsidiary of Ally Financial Inc. ResCap conducts certain of its mortgage operations through GMAC Mortgage, a wholly owned subsidiary that is not affiliated with General Motors. ResCap is an approved Fannie Mae and Freddie Mac servicer and approved issuer for Ginnie Mae.

ResCap is a leader in facilitating mortgage refinancing and mortgage modifications through HAMP and other government programs. At March 31, 2012, ResCap was servicing over 2.4 million mortgage loans, with an aggregate unpaid principal balance of approximately \$374 billion. Of these, approximately 68% of the loans (by unpaid principal balance) are owned, insured or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae. Since 2008, GMAC Mortgage has executed over 784,000 default workouts for borrowers. GMAC Mortgage is a leading HAMP participant and has effected more than 51,000 permanent HAMP modifications to date. GMAC Mortgage was the first major originator of loans to roll out the Treasury's HAMP 2.0 program. ResCap's executive offices are located in New York City, and it has major operations in Fort Washington, Pennsylvania, Minneapolis, Minnesota, Waterloo, Iowa, Dallas, Texas, and Burbank, California.

**Contacts**

Susan Fitzpatrick



121202012112600000000018

Director of Communications  
(215) 734-4400  
susan.fitzpatrick@gmacrescap.com

**ResCap Board of Directors Approves Bid by Ocwen and Walter Investment for Sale of Mortgage Servicing and Origination Platform Assets**

*Decision subject to Court approval*

**October 24, 2012 - NEW YORK-** The ResCap Board of Directors has given its preliminary approval of the bid by the team of Ocwen Loan Servicing, LLC and Walter Investment Management Corp. of \$3 billion as the highest and best bid for ResCap's mortgage servicing and origination platform assets. The sale approval hearing before the Bankruptcy Court will commence on November 19, 2012.

ResCap will continue to work with all parties involved to ensure the best possible outcome for its creditors and other stakeholders in its Chapter 11 cases.

Final approval of a sale transaction is subject to, among other things, definitive documentation and Bankruptcy Court approval.

***About Residential Capital (ResCap)***

Residential Capital, LLC is one of the largest originators, sellers and servicers of residential mortgage loans in the United States. ResCap is a wholly owned subsidiary of Ally Financial Inc. ResCap conducts certain of its mortgage operations through GMAC Mortgage, a wholly owned subsidiary that is not affiliated with General Motors. ResCap is an approved Fannie Mae and Freddie Mac servicer and approved issuer for Ginnie Mae.

ResCap is a leader in facilitating mortgage refinancing and mortgage modifications through HAMP and other government programs. At March 31, 2012, ResCap was servicing over 2.4 million mortgage loans, with an aggregate unpaid principal balance of approximately \$374 billion. Of these, approximately 68% of the loans (by unpaid principal balance) are owned, insured or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae. Since 2008, GMAC Mortgage has executed over 784,000 default workouts for borrowers. GMAC Mortgage is a leading HAMP participant and has effected more than 51,000 permanent HAMP modifications to date. GMAC Mortgage was the first major originator of loans to roll out the Treasury's HAMP 2.0 program. ResCap's executive offices are located in New York City, and it has major operations in Fort Washington, Pennsylvania, Minneapolis, Minnesota, Waterloo, Iowa, Dallas, Texas, and Burbank, California.

**Contacts**

Susan Fitzpatrick, +1 (215) 734-4400  
Director of Communications  
Mobile: +1 (267) 565-7581  
[susan.fitzpatrick@gmacrescap.com](mailto:susan.fitzpatrick@gmacrescap.com)



121202012110800000000072



75 Princeton Oval  
Freehold, NJ 07728

February 14, 2013

GMAC Mortgage LLC  
Loss Mitigation  
233 Gibraltar Rd., Suite 600  
Horsham, PA 19044

VIA Email: [financialpackage@gmacm.com](mailto:financialpackage@gmacm.com)

Re: 93 Wisconsin St.  
Long Beach, NY 11561  
Account Number 0685483862

Dear Sir or Madam:

Attached please find the borrowers' Financial Analysis Form with regard to the above-referenced property.

If you have any questions or need further information, please call 732-462-6672. Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to be 'Edward N. Tobias', written over a horizontal line.

Edward N. Tobias

" C "

**Law Offices of Edward N. Tobias, L.L.C.**

**75 Princeton Oval  
Freehold, NJ 07728  
Tel./Fax (732) 462-6672**

[www.tobiaslaw.com](http://www.tobiaslaw.com)

February 26, 2013

GMAC Mortgage, LLC  
Loss Draft Services  
2700 West Frye Road  
Chandler, AZ 85224

VIA OVERNIGHT MAIL  
Check No. 788013 Enclosed  
Attachments VIA FAX  
866-336-3811

Copy to: Ocwen Loan Servicing, LLC  
PO Box 780  
Waterloo, IA 50704-0780

Email: [ocwen@mortgagebanksite.com](mailto:ocwen@mortgagebanksite.com)  
VIA FAX 866-709-4744  
Attn. Loss Mitigation

Re: Suzanne Koegler & Edward N. Tobias  
Account No. 0685483862  
Premises: 93 Wisconsin St., Long Beach, NY 11561

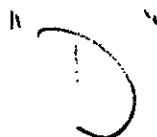
Dear Sir or Madam:

Thank you for your recent correspondence regarding the above-referenced property. I would like to concurrently advise Ocwen Loan Servicing, LLC as to the current status of the property and mortgage. Please note that I am responding on a personal basis and in my capacity as an attorney until such time as alternate counsel is warranted.

As you know, the property was affected by Superstorm Sandy on October 29, 2012. I am currently surveying options regarding the disposition of the property; this survey is still ongoing. These options include making appropriate repairs, replacement, or sale of the property.

On November 27, 2012, a request for forbearance was granted for the months of December, 2012, January, 2013, and February, 2013 so that personal funds could be made available should an appropriate option be implemented pending insurance recovery. On February 14, 2013, per a conversation with a representative from GMAC Mortgage in which I requested a forbearance extension, I was advised that discussions regarding any extension could not be made prior to the forbearance expiration on February 28, 2013. Per my conversation with a representative from Ocwen on February 25, 2013, I am advised that per your policy, no extensions of such forbearances are permitted.

A Borrower Response Package was sent via email on February 14, 2013 and resent by fax on February 25, 2013 requesting possible short sale and loan modification review based on pre-existing market value diminution and storm damage. Although I am unclear from your representative whether the submission of this Package cancelled the



forbearance at that time I note that this account was already scheduled to be transferred to Ocwen Loan Servicing, LLC on February 16, 2013 per your letter, dated February 7, 2013. Since Ocwen Loan Servicing, LLC is known as a federally chartered savings bank engaged in discounted loan acquisition whose primary business is the servicing and special servicing of nonconforming, sub-performing and nonperforming residential and commercial mortgage loans, GMAC Mortgage, LLC acted to impair the borrowers' creditworthiness prior to the forbearance expiration date thus denying the borrower the capacity to bring current with personal funds any of the balance under forbearance.


Therefore, I am enclosing Check No. 788013, in the amount of \$90,413.90, received from Fidelity National Property & Casualty Ins. Co. for settlement of building damage per your letter, dated February 14, 2013. This settlement is disputed. Please hold these funds in escrow and apply to the pre-existing mortgage balance, as necessary to keep this loan current. Accordingly, this loan shall not be considered in default by the mortgagor as funds paid to the order of Edward Tobias and Suzanne Koegler and GMAC Mortgage, LLC have been directed thereto for the benefit of the payees.

If you have any questions or need further information, please call me at 732-462-6672.

Thank you for your continued courtesies and assistance herein.

Very truly yours,

LAW OFFICES OF EDWARD N. TOBIAS, L.L.C.



By: Edward N. Tobias, Esq.

Ocwen Loan Servicing, LLC  
3451 Hammond Ave  
PO Box 780  
Waterloo, IA 50704-0780

Pg 95 of 149



6/4/2013

04/28/13 13:30:3 0000029 20130804 W3A101 OCWEN&D 1 02 DOM W3A10000P 180278 D1



SUZANNE KOEGLER  
EDWARD TOBIAS  
75 PRINCETON OVAL  
FREEHOLD NJ 07728-5352



RE: Account Number 0685483862  
Property Address 93 WISCONSIN STREET  
LONG BEACH NY 11561

Dear SUZANNE KOEGLER and EDWARD TOBIAS:

We recently received your request for a Traditional loan modification. We are not able to fulfill your request at this time for the following reason(s):

Modification terminated per customer's request.

At this time, you may want to seek advice regarding your next steps. We suggest you call 1.800.CALL.FHA (1.800.225.5342) to locate a HUD-certified housing counseling agency. You may also want to call 1.888.995.HOPE (1.888.995.4673) to request assistance from a HUD-approved housing counselor.

We will continue to work with you to explore options that may be available. If you have any questions, please contact us at 1-877-928-4622 between the hours of 8:00 am and 9:00 pm Monday through Friday central standard time.

In addition, you may have your concerns reviewed by an independent advocate in our Executive Escalation Team. They may be reached at 866-924-8409 Monday through Friday from 8am to 5pm CT or via email at [homeowner.help@mortgagebanksite.com](mailto:homeowner.help@mortgagebanksite.com).

Modification Department  
Loan Servicing

**Please Note:** Federal law requires that we advise you that this notice is from a debt collector attempting to collect on a debt and any information will be used for that purpose.

**Notice Regarding Bankruptcy:** If you are currently involved in an open bankruptcy case or if you have been discharged of your personal liability for repayment of this debt; this notice is being provided for informational purposes only and is not an attempt to collect a pre-petition or discharged debt. Furthermore, any action that we may take is for the sole purpose of protecting our lien interest in your property and is not to recover any amounts from you personally. If you have surrendered your property during your bankruptcy case, please disregard this notice.



**Note:** If you are currently in bankruptcy under Chapter 13, you should continue to make payments in accordance to your Chapter 13 plan.

" E "

6/4/2013

Account Number 0685483862

Page 2

**Residents of New York: If you believe your request has been wrongly denied, you may file a complaint with the New York State Banking Department at 1-877-226-5697 or [www.banking.state.ny.us](http://www.banking.state.ny.us).**

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**Law Offices of Edward N. Tobias, L.L.C.**

**75 Princeton Oval  
Freehold, NJ 07728  
Tel./Fax (732) 462-6672**

[www.tobiaslaw.com](http://www.tobiaslaw.com)

April 25, 2013

Ocwen Loan Servicing, LLC  
Insurance Claims Center  
PO Box 52052  
Phoenix, AZ 85072-9838

Re: Suzanne Koegler & Edward N. Tobias  
Account No. 0685483862  
Tracking No. 239797  
Premises: 93 Wisconsin St., Long Beach, NY 11561

Dear Sir or Madam:

Thank you for your recent correspondence of April 12, 2013 regarding the above-referenced property and requesting the insurance check and Homeowners Statement. I note that these documents were previously submitted on February 26, 2013; the check was returned as incorrectly endorsed. Although my wife, Suzanne Muller Koegler, had granted authority to endorse the check on her behalf, I am providing her signature on the check as a courtesy to your request. Please accept my duplicate signature on the prior Homeowners Statement as this information has not changed.

As you know, the property was affected by Superstorm Sandy on October 29, 2012. I am currently disputing the settlement proposed by the flood insurer as insufficient. Enclosed please find information provided to the Nassau County Department of Assessment indicating that the property has devalued substantially after the storm. Attached is the report of Raymond G. Faldetta, indicating estimated repairs required in the amount of \$254,164.39. Also attached are comparable home sales and an offer of \$130,000 received on the property as of February 28, 2013. I have currently listed the property for sale at \$225,000 (see attached) although other realtors in the area have indicated that this amount is unrealistic at present.

A Borrower Response Package was sent to GMAC Mortgage, LLC via email on February 14, 2013 and resent by fax on February 25, 2013 requesting possible short sale and loan modification review based on pre-existing market value diminution and storm damage. Since this account has now been transferred to Ocwen Loan Servicing, LLC I am resubmitting this package for your review.

I am again enclosing Check No. 788013, in the amount of \$90,413.90, received from Fidelity National Property & Casualty Ins. Co. for settlement of building damage. This

1. F

settlement is disputed. Please hold these funds in escrow and apply to the pre-existing mortgage balance, as necessary to keep this loan current. At this time, the borrowers have been granted a forbearance, which expires on May 31, 2013; therefore, this loan shall not be considered in default by the mortgagor as funds paid to the order of Edward Tobias and Suzanne Koegler and GMAC Mortgage, LLC have been directed thereto for the benefit of the payees.

If you have any questions or need further information, please call me at 732-462-6672.

Thank you for your continued courtesies and assistance herein.

Very truly yours,

LAW OFFICES OF EDWARD N. TOBIAS, L.L.C.

---

By: Edward N. Tobias, Esq.

**Law Offices of Edward N. Tobias, L.L.C.**

**75 Princeton Oval  
Freehold, NJ 07728  
Tel./Fax (732) 462-6672**

[www.tobiaslaw.com](http://www.tobiaslaw.com)

May 20, 2013

Ocwen Loan Servicing, LLC  
Insurance Claims Center  
PO Box 52052  
Phoenix, AZ 85072-9838

Re: Suzanne Koegler & Edward N. Tobias  
Account No. 0685483862  
Tracking No. 239797  
Premises: 93 Wisconsin St., Long Beach, NY 11561

Dear Sir or Madam:

Thank you for your recent correspondence of May 15, 2013 and telephone messages regarding the above-referenced property and requesting an amended Homeowners Statement (see enclosed).

As you know, the property was affected by Superstorm Sandy on October 29, 2012. I am currently disputing the settlement proposed by the flood insurer as insufficient. I have previously forwarded to your attention information provided to the Nassau County Department of Assessment indicating that the property has devalued substantially after the storm. Attached was the report of Raymond G. Faldetta, indicating estimated repairs required in the amount of \$254,164.39. Also attached were comparable home sales and an offer of \$130,000 received on the property as of February 28, 2013. I have currently listed the property for sale at \$225,000 (previously attached) although other realtors in the area have indicated that this amount is unrealistic at present. Since my last correspondence, my realtor has advised that another offer of \$140,00 has been received on the property. These offers were rejected as insufficient to pay off the mortgage balance due to inadequate insurance compensation.

My understanding is that pursuant to the mortgage instrument, if restoration or repair is not economically feasible or Lender's security would be lessened, insurance proceeds shall be applied to the sums secured by the security instrument, whether or not then due, with the excess, if any, paid to Borrower. I have provided evidence that such repairs are not economically feasible given the devaluation of the properties in the area based on storm damage and market conditions. Please advise if you require further information.

You are holding in escrow Check No. 788013, in the amount of \$90,413.90, received from Fidelity National Property & Casualty Ins. Co. for settlement of building damage.

G



This settlement is disputed. I hereby request your assistance in settling this insurance claim so that the Borrowers' and Lender's security in the property can be maintained. Time is of the essence because of the short selling season in this area. I again direct you to apply these funds in escrow to the pre-existing mortgage balance, as necessary to keep this loan current. At this time, the borrowers have been granted a forbearance, which expires on May 31, 2013; therefore, this loan shall not be considered in default by the mortgagor as funds paid to the order of Edward Tobias and Suzanne Koegler and GMAC Mortgage, LLC have been directed thereto for the benefit of the payees.

If you have any questions or need further information, please call me at 732-462-6672.

Thank you for your continued courtesies and assistance herein.

Very truly yours,

LAW OFFICES OF EDWARD N. TOBIAS, L.L.C.



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By: Edward N. Tobias, Esq.

## HOMEOWNER'S STATEMENT

Homeowner: SUZANNE KOEGLER  
EDWARD TOBIAS

Property Address: 93 WISCONSIN STREET  
LONG BEACH, NY, 11561

Loan Number: 0685483862

Tracking Number: 239797

Date of Loss: 10/29/2012

I/we, the undersigned mortgagor(s), hereby state the damage to our property, located at the above address, has been or will be repaired in a good and workmanlike manner. The loss was as follows:

Pre-existing Market Value Diminution / (PLEASE COMPLETE THE FOLLOWING AND SIGN BELOW)

Storm Damage Type of Loss: \_\_\_\_\_ Date of Loss: 10/29/2012 Total Amount of Loss/Damages: \$300,000

Actual/Estimated Repair Completion Date: Repairs will not be completed

Amount Insurance Company Paid or Will Pay: \$90,413.90 To Date Amount of Insurance Deductible: \$2,000

Amount of Recoverable OR Non-Recoverable Depreciation: \$8,089.42 Per Insurer

Name of Insurance Company: Fidelity National Property & Casualty Ins. Co.

Policy Number: 317700896890 07 Claim Number: 112-0017888

Name of Insurance Adjuster: Heather Tricola Phone Number: 1-800-820-3242

Please identify current property condition:

(X) All Walls Standing

( ) Some Walls Standing

( ) No Walls Standing

Please select from the two repair options below:

( ) I have done or will be doing the repairs myself -OR- I will be acting as my own GENERAL CONTRACTOR

(Loan must be current to select the above option)

(X) Repairs are not economically feasible. Please apply insurance proceeds

( ) I have hired or will hire a GENERAL CONTRACTOR to do the repairs (only 1 contractor will be hired to mortgage as advised).

I/we, the undersigned mortgagor(s), do hereby acknowledge and agree that GMAC Mortgage does not guarantee the quality of workmanship of any contractor or guarantee that the work will be accomplished within any specific time frame. The undersigned mortgagor(s) acknowledge and agree that the the contractor is hired by us, the mortgagor, and they work for us, the mortgagor. The undersigned mortgagor(s) do further acknowledge and agree that, in reliance on the truthfulness and accuracy of the aforementioned assurances to GMAC Mortgage by the undersigned mortgagors, GMAC Mortgage has agreed to release insurance funds to the undersigned mortgagors in increments for the sole express purpose of completing repairs to the mortgaged property. The undersigned mortgagors promise and expressly warrant all repairs as set forth in the adjuster's report/contractor's estimate will be completed in a reasonable time and in a manner satisfactory to GMAC Mortgage, and all contractor invoices for labor and materials will likewise be timely paid in full. The undersigned mortgagors agree and understand that we are personally liable for any debts, dues, fees, costs, liens, judgments, etc. ("claims"), which might be filed by any contractor or subcontractor whose legitimate work is not properly compensated, and that we will defend and indemnify GMAC Mortgage against any and all loss or damages arising out of any such claims.

Mortgagor's (Borrower) Signature

Date

Mortgagor's (Borrower) Signature

Date

Home Phone: 732-462-6672

Work Phone: 732-462-6672

Fax Number: \_\_\_\_\_



239797 - HOST



*Ocwen Loan Servicing, LLC*  
*PO Box 780*  
*Waterloo IA 50704-0780*  
**HELPING HOMEOWNERS IS WHAT WE DO!™**  
**OCWEN.MORTGAGEBANKSITE.COM**

March 6, 2013

Suzanne Koegler  
Edward Tobias  
75 Princeton Oval  
Freehold NJ 07728

Re: Account Number 0685483862  
Property Address 93 Wisconsin Street  
Long Beach NY 11561

Dear Suzanne Koegler and Edward Tobias:

This letter is in response to your inquiry dated February 26, 2012 and received in our office February 27, 2013, regarding the above referenced account.

Our records indicate on March 5, 2013, the insurance claim check in the amount of \$90,413.90 was returned to the above mailing address for proper endorsement. It requires Suzanne Koegler's endorsement. Please have Suzanne Koegler endorse and return as instructed.

In addition, the disaster forbearance has been extended with payments of \$0.00 for March 1, 2013 to May 1, 2013. There are no late fees or negative credit reporting during forbearance. You can pay any amount at any time, as long as the account is current by May 31, 2013. Payments are not forgiven, they are deferred, so any unpaid amount is due at the end of the forbearance period.

If there are any other questions or concerns regarding this account, please contact Customer Care at 1-800-766-4622 between the hours of 6:00 am to 10:00 pm CT Monday through Friday and 9:00 am to 1:00 pm CT on Saturday.

Customer Care/LH  
Loan Servicing

" H "

**Law Offices of Edward N. Tobias, L.L.C.**

**75 Princeton Oval  
Freehold, NJ 07728  
Tel./Fax (732) 462-6672**

[www.tobiaslaw.com](http://www.tobiaslaw.com)

August 22, 2013

Ocwen Loan Servicing, LLC  
Insurance Claims Center  
PO Box 52052  
Phoenix, AZ 85072-9838

Email: [ocwen@mortgagebanksite.com](mailto:ocwen@mortgagebanksite.com)  
VIA FAX 866-709-4744  
866-336-3811

Re: Suzanne Koegler & Edward N. Tobias  
Account No. 0685483862  
Tracking No. 239797  
Premises: 93 Wisconsin St., Long Beach, NY 11561

Dear Sir or Madam:

As you know, the above-referenced property was affected by Superstorm Sandy on October 29, 2012. I am currently disputing the settlement directed by the flood insurer as insufficient and any proposed repairs to the property as inappropriate. I have previously forwarded to your attention considerable documentation indicating that the property has devalued substantially after the storm. I have now accepted an offer for the property at \$210,000 (See attached draft Contract) This offer, when added to the insurance proceeds of \$100,189.55 held in escrow by you, is now sufficient to pay off the principal balance of \$260,358.74 (per your Statement, dated August 1, 2013).

As stated to you previously, pursuant to the mortgage instrument, if restoration or repair is not economically feasible or Lender's security would be lessened, insurance proceeds shall be applied to the sums secured by the security instrument, whether or not then due, with the excess, if any, paid to Borrower. I have provided evidence that such repairs are not economically feasible given the devaluation of the properties in the area based on storm damage and market conditions. Accordingly, I hereby demand that you apply these funds in escrow to the pre-existing mortgage balance to keep this loan current until the cash sale of the property can be concluded. Time is of the essence. Please advise if you require further information or if a grant of forbearance of the next payment, due September 1, 2013, would be amenable.

The borrowers have complied with the terms of all prior forbearances and this loan is now current to date of this letter; therefore, this loan shall not be considered in default by the mortgagor as all funds paid to the order of Edward Tobias and Suzanne Koegler and

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Ocwen Loan Servicing, LLC (Successor to GMAC Mortgage, LLC) have been directed thereto for the benefit of the payees.

Additionally, I hereby authorize Maria J. Aramanda, Esq. to communicate with you directly regarding this transaction. Her contact information is:

Maria J. Aramanda  
Attorney At Law  
166 East Park Avenue  
Long Beach, New York 11561

(516) 889-0800 phone

If you have any questions or need further information, please call me at 732-462-6672.

Thank you for your continued courtesies and assistance herein.

Very truly yours,

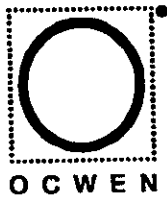
LAW OFFICES OF EDWARD N. TOBIAS, L.L.C.



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By: Edward N. Tobias, Esq.

cc: Maria J. Aramanda, Esq.



*Ocwen Loan Servicing, LLC*  
*PO Box 780*  
*Waterloo IA 50704-0780*  
HELPING HOMEOWNERS IS WHAT WE DO!™  
OCWEN.MORTGAGEBANKSITE.COM

08/26/13

SUZANNE KOEGLER  
EDWARD TOBIAS  
75 PRINCETON OVAL

FREEHOLD NJ 07728

RE: Account Number 0685483862  
Property Address 93 WISCONSIN STREET  
LONG BEACH NY 11561

Dear SUZANNE KOEGLER  
EDWARD TOBIAS

In connection with your request for a Short Sale, we regret to inform you that your request has been denied for the following reason(s):

- [ ] We have been unable to successfully obtain access to the property to complete the required valuation needed to proceed with your request.
- [ ] We have not received the properly signed and executed "Approval to Participate Pre-Foreclosure Sale Procedure" form that was issued to you.
- [ ] The Financial information provided shows your income is sufficient to cover your existing mortgage obligation.
- [ ] We previously requested additional information from you which has not been received; therefore, we are unable to continue our review for workout solutions.
- [ ] We are unable to review your account for assistance as your request was not received with sufficient time to postpone the scheduled foreclosure sale date.

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J

08/26/13  
Account Number 0685483862  
Page Two

- ☐ The Short Sale Closing did not take place by the required closing date.
- ☐ The required Promissory Note has not been received or was not properly signed and executed by all parties.
- ☐ We are unable to approve your request for assistance at this time since your loan is current and you have not been determined to be at risk for imminent default.
- ☐ We are unable to review your request for assistance as it was received after the foreclosure sale was held.
- ☐ We have been unable to clear/resolve outstanding title issues in order to meet recording requirements.
- ☐ We are unable to approve your request for assistance as your foreclosure redemption period has expired.
- ☐ The required contribution amount was not received by the due date as specified in the approval.
- ☐ The Short Sale offer we received is below the obtained property valuation.
- ☐ The property has been determined to be non-owner occupied.
- ☒ Borrower is no longer interested in a short sale.
- ☐

At times like these we feel it is important for you to seek financial advice from a trusted source experienced with situations like yours. Therefore, we recommend you call 1.800.CALL.FHA to find a HUD-Certified housing counseling agency to discuss your needs. You can also call the HOPE hotline number (888-995-HOPE) for free assistance from HUD-approved housing counselors and can also assist in understanding this borrower notice letter by asking for MHA HELP.

08/26/13

Account Number 0685483862

Page Three

We will continue to work with you to explore other options that may be available for your circumstances. If you have any questions regarding the above decision, please contact our office at 800-850-4622, between the hours of 7:00 a.m. and 9:00 p.m. Monday through Thursday Central Standard time, 7:00 a.m. to 6:00 p.m. Central Standard time Friday, and 8:00 a.m. to 12:00 p.m. Central Standard time on Saturday.

Loss Mitigation Department  
Loan Servicing

Notice: Federal law requires that we advise you that this notice is from a debt collector attempting to collect on a debt and any information obtained will be used for that purpose.

**Notice Regarding Bankruptcy:** If you have filed for bankruptcy and your case is still active or if you have received an order of discharge, please be advised that this is not an attempt to collect a pre-petition or discharged debt. Any action taken by us is for the sole purpose of protecting our lien interest in your property and is not to recover any amounts from you personally.

**Residents of North Carolina:** If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the North Carolina Office of the Commissioner of Banks, website, [www.nccob.gov](http://www.nccob.gov).

**Residents of New York:** If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the New York State Banking Department at 1-877-226-5697 or [www.banking.state.ny.us](http://www.banking.state.ny.us).

#### Disclosure of the Use of Information Obtained From an Outside Source

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.



08/26/13

Account Number 0685483862

Page Four

Name: Equifax Information Services LLC,

Address: P.O. Box 740241, Atlanta, GA 30374-0241

[Toll-free] Telephone number: 800-685-1111    [www.equifax.com](http://www.equifax.com)

*If you have any questions regarding this notice, you should contact:*

Creditor's name: Ocwen Loan Servicing, LLC

Creditor's address: PO Box 780 3451 Hammond Avenue  
Waterloo, IA 50704-0780

Creditor's telephone number: 800-766-4622

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

4:57

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

Edward N. Tobias and Suzanne M.  
Koegler,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

CIVIL ACTION

DOCKET NO.: 3:13-cv-06471

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**REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' CLAIMS  
AGAINST MOVING DEFENDANTS**

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# **TABLE OF CONTENTS**

	<b>Page</b>
INTRODUCTION .....	1
LEGAL ARGUMENT.....	2
I.    It Is Procedurally Improper For Plaintiffs to Assert New Claims in Their Response to Moving Defendants’ Motion to Dismiss.....	2
II.   Plaintiffs’ Newly-Raised Fraud Claim Must Be Dismissed Because Plaintiffs Have Failed to Properly Plead Such Claim. ....	3
III.  Plaintiffs’ Claim Regarding the Purchase Price of Plaintiffs’ Properties Remains Unsupported and Still Fails to State a Claim Upon Which Relief May Be Granted.....	4
IV.  Plaintiffs’ Claims Relating to Defendants’ Failure to Modify Plaintiffs’ Loan(s) Must Be Dismissed Because Plaintiffs Fail to State a Viable Cause of Action. ....	5
A.  There is No Private Right of Action Under HAMP. ....	6
B.  HARP is Inapplicable to the Plaintiffs’ Claim. ....	7
C.  Plaintiffs Fail to State a Viable Claim To Suggest that the Moving Defendants Violated Any Duty of Good Faith and Fair Dealing Or The New York State Banking Department Regulations.....	7
V.   The United States District Court for the District of New Jersey Is Not the Proper Venue In Which To Bring Any Allegations Regarding The New York Property. ....	10
CONCLUSION .....	11

## **TABLE OF AUTHORITIES**

### **Cases**

<u>Brecker v. 1st Republic Mortgage Bankers, Inc.</u> , No. 13-5646, 2013 U.S. Dist. LEXIS 151214 (D.N.J. Oct. 21, 2013).....	6
<u>Commw. of Pa. ex. rel. Zimmerman v. PepsiCo, Inc.</u> , 836 F.2d 173 (3d Cir. 1988) .....	2
<u>Coyle v. Englander’s</u> , 199 N.J. Super. 212, 223 (App. Div. 1985).....	9
<u>Federico v. Home Depot</u> , 507 F.3d 188 (3d Cir. 2007) .....	2
<u>Gennari v. Weichert Co. Realtors</u> , 148 N.J. 582 (1996) .....	3
<u>GFS/Morristown L.P. v. Vector Whippany Assocs.</u> , No. A-1370-06T3, 2009 N.J. Super. Unpub. LEXIS 883, (N.J. App. Div.. Apr. 2, 2009).....	8
<u>Hyland v. Kirkman</u> , 157 N.J. Super. 565 (Ch. Div. 1978) .....	3
<u>Keosession v. Bank of America</u> , Civ. No. 11-3478, 2012 U.S. Dist. LEXIS 16811 (D.N.J. Feb. 9, 2012) .....	6
<u>Levinson v. D’Alfonso &amp; Stein</u> , 320 N.J. Super. 312 (App. Div. 1999) .....	3
<u>N.J. Treas. v. Qwest Communications Int’l, Inc.</u> , 387 N.J. Super. 469 (App. Div. 2006) .....	3
<u>Nat’l Cmty. Bank of N.J. v. G.L.T. Indus.</u> , 276 N.J. Super. 1 (App. Div. 1994).....	6, 8
<u>Payan v. GreenPoint Mortgage Funding, Inc.</u> , 681 F. Supp. 2d. 564 (D.N.J. 2010) .....	2
<u>Rexnord Holdings, Inc. v. Bidermann</u> , 21 F.3d 522 (2d Cir. 1994).....	9
<u>Slimm v. Bank of Am. Corp.</u> , No. 12-5846, 2013 U.S. Dist. LEXIS 62849 (D.N.J. May 2, 2013).....	6
<u>Smithkline Beecham PLC v. Teva Pharms. USA, Inc.</u> , Nos. 04-0215, 05-0536, 2007 U.S. Dist. LEXIS 45703 (D.N.J. Jun. 22, 2007) .....	2

### **Regulations**

N.Y. Comp. Codes R. & Regs. 3 § 419.2(g) .....	9
--	---

### **Statutes**

28 U.S.C. § 1391(a) .....	11
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## **INTRODUCTION**

Rather than providing a cogent argument for why the Motion to Dismiss (the “Motion”) that was filed by Defendants William C. Erbey, Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and GMAC Mortgage, LLC (collectively the “Moving Defendants”) should be denied, Plaintiffs Edward Tobias and Suzanne Koegler (collectively, the “Plaintiffs”) submitted a letter brief (the “Response”) in which they appear to attempt to improperly amend the allegations set forth in their Complaint. In their Response, Plaintiffs attempt to amend their Complaint by setting forth a variety of bald legal conclusions and new allegations of wrongdoing against the Moving Defendants. Such attempt to amend the Complaint is procedurally improper and any claims set forth in the Response must be dismissed. Moreover, even if this Court does entertain the newly-raised claims, those claims, like the claims that were set forth in the original Complaint, must be dismissed for failure to state a viable cause of action.

Plaintiffs’ attempt to set forth in their Response a fraud claim, a breach of contract claim and several other claims arising out of a mortgage on the property at 93 Wisconsin Street, Long Beach, New York (the “New York Property”). Such attempt is not only procedurally improper but woefully deficient because the Plaintiffs fail to set forth any facts that are sufficient to meet the required pleading standards. For instance, Plaintiffs’ newly articulated claims concerning modification of the Plaintiffs’ loan(s) must be dismissed because a loan servicer has no duty to modify a loan. Moreover, nothing in HAMP or the New York State Banking Department’s regulations gives Plaintiffs a private right of action to raise these claims. Similarly, Plaintiffs’ attempt to state a breach of contract claim fails because they do not allege any damages resulting from the alleged breach.

For the foregoing reasons, and for the reasons set forth below, Plaintiffs' Complaint must be dismissed and any attempt by Plaintiff to amend their claims through the filing of the Response must also be denied.

### **LEGAL ARGUMENT**

#### **I. It Is Procedurally Improper For Plaintiffs to Assert New Claims in Their Response to Moving Defendants' Motion to Dismiss.**

Plaintiffs' attempt to amend their Complaint and to set forth new causes of action against the Moving Defendants in their Response is completely improper. See Federico v. Home Depot, 507 F.3d 188, 201-202 (3d Cir. 2007). In Federico, the Third Circuit Court of Appeals affirmed a District Court's dismissal of a complaint where the plaintiff raised factual allegations in her brief in opposition to a motion to dismiss, and those factual allegations were not present in the complaint. Id. The Court stated that it would "not consider after-the-fact allegations in determining the sufficiency of [the] complaint under Rules 9(b) and 12(b)(6). Id. (citing Commw. of Pa. ex. rel. Zimmerman v. PepsiCo, Inc., 836 F.2d 173, 181 (3d Cir. 1988) ("It is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss."). See also Payan v. GreenPoint Mortgage Funding, Inc., 681 F. Supp. 2d 564 (D.N.J. 2010) (citing Smithkline Beecham PLC v. Teva Pharms. USA, Inc., Nos. 04-0215, 05-0536, 2007 U.S. Dist. LEXIS 45703, at \*3 (D.N.J. Jun. 22, 2007) ("Reply briefs are not the time to present new argument."<sup>1</sup>)). Similarly, this Court should not consider the claims and allegations that Plaintiffs raise for the first time in their Response. If Plaintiffs wish to allege new factual allegations or bring new claims, the proper method would be to seek leave to amend their Complaint. However, without a proper amendment any claims in the Response must be dismissed.

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<sup>1</sup> A true and correct copy of this opinion is attached to the Certification of Michael P. Trainor at Ex. A.

**II. Plaintiffs' Newly-Raised Fraud Claim Must Be Dismissed Because Plaintiffs Have Failed to Properly Plead Such Claim.**

To state a viable counterclaim for common law fraud under New Jersey law, Plaintiffs must allege with the requisite degree of specificity (1) that Plaintiff made a material misrepresentation; (2) that Plaintiff knew the misrepresentation was false; (3) that Plaintiff intended that Defendants would rely on the misrepresentation; (4) that Defendants did reasonably rely on the misrepresentation; and (5) resulting damages. See Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1996); N.J. Treas. v. Qwest Communications Int'l, Inc., 387 N.J. Super. 469, 485 (App. Div. 2006). Allegations of fraud may not be pled generally. Hyland v. Kirkman, 157 N.J. Super. 565, 584-85 (Ch. Div. 1978). Rather, specific facts must support a fraud allegation. Id. A claim for fraud should be dismissed if it fails to satisfy the specificity requirement, or if it fails to set forth the requisite elements. Levinson v. D'Alfonso & Stein, 320 N.J. Super. 312, 315 (App. Div. 1999) (affirming dismissal of a claim for fraud, in part, due to lack of specificity and failure to set forth the elements of a fraud claim).

In their Response, Plaintiffs baldly allege that Moving Defendants crafted a "fraudulent valuation" of one of Plaintiffs' properties in an apparent attempt to induce Plaintiffs to refinance that property or to draw equity from that property. See Plaintiffs' Brief at 2. Plaintiffs provide an October 10, 2007 letter from GMAC Mortgage as an exhibit, apparently in an attempt to support their "fraudulent valuation" claim. While Plaintiffs refer obliquely to a "fraudulent valuation," Plaintiffs do not specifically state what, if any, information in the October 10, 2007 letter is false. Plaintiffs also fail to even allege that Moving Defendants knew such information to be false, let alone to plead a factual basis to support such an allegation. Moreover, Plaintiffs fail to allege or plead support for the notion that Plaintiffs took any action in reliance upon any alleged misinformation in the October 10, 2007 letter. Finally, Plaintiffs fail to allege or support

the notion that Plaintiffs have somehow been harmed as a result of any reliance on any misinformation from this letter.

Rather, Plaintiffs simply refer to the October 10, 2007 letter and baldly assert that the letter constitutes fraud on the part of the Moving Defendants. Such allegations, without more, are woefully deficient and do not even superficially satisfy four of the five elements required to plead a common law fraud claim. As such, Plaintiffs' fraud claim surrounding the October 10, 2007 letter must be dismissed.

**III. Plaintiffs' Claim Regarding the Purchase Price of Plaintiffs' Properties Remains Unsupported and Still Fails to State a Claim Upon Which Relief May Be Granted.**

Plaintiffs originally claimed that Moving Defendants caused "untrue and inaccurate property values at the time the plaintiffs purchased the properties." See Complaint at Third Count, ¶2. Despite this allegation, Plaintiffs failed to identify what actions Moving Defendants allegedly took, how those actions were unlawful or fraudulent, or what damages resulted from those actions.

Armed with a second chance to clarify their claims, Plaintiffs do little in their Response to correct this deficiency. Plaintiffs now only offer the conclusory statement that "Plaintiffs were damaged by Defendants' market manipulations resulting in inflated market values at the time of purchase." See Plaintiffs' Brief at 3. Despite this statement, Plaintiffs still fail to identify any single action, or even a category of actions, that Moving Defendants allegedly took. Plaintiffs fail to state, in even the barest detail, what sort of "market manipulations" Moving Defendants are accused of engaging in. In short, Moving Defendants have still not been put on notice as to what allegations they must defend against. Such a nebulous claim does not meet the minimum pleading standards of Twombly and Iqbal, and therefore this claim must be dismissed as a matter of law. See Moving Defendants' Brief at 2-4.



Plaintiffs also appear to re-characterize the above-referenced claim as the as of yet unrecognized claim of “fraud upon the market.” Despite this new characterization, it is still entirely unclear what exactly Plaintiffs seek to allege with this statement because the Plaintiffs fail to plead any specific factual allegations in support of this bald assertion of fraud, let alone a statement of facts meeting the level of specificity required of a fraud claim. See Section II above. As a result, any fraud claim or claim based on “fraud upon the market” must be dismissed.

**IV. Plaintiffs’ Claims Relating to Defendants’ Failure to Modify Plaintiffs’ Loan(s) Must Be Dismissed Because Plaintiffs Fail to State a Viable Cause of Action.**

Plaintiffs originally alleged that they requested modification assistance from the Moving Defendants and that the Moving Defendants failed to provide any such assistance “according to the terms of the mortgage contract” and “obligations accepted by the [Moving D]efendants under various federal and state programs.” See Complaint at Third Count, ¶¶ 3-4. In their Motion the Moving Defendants challenged this claim and highlighted that Plaintiffs had failed to identify which mortgage(s) had been violated, which terms of the mortgage(s) had been violated, which state or federal program(s) imposed obligations upon the Moving Defendants, and how any such obligation had been violated. See Defendants’ Brief in Support of their Motion at 7-9.

While still not identifying any specific mortgage terms that impose an obligation on the Defendants to assist Plaintiffs or any specific mortgage terms that have been violated, Plaintiffs now assert that Moving Defendants have certain obligations under the Home Affordable Modification Program (“HAMP”), the Home Affordable Refinance Program (“HARP”), and Part 419 of the New York State Banking Department Regulations. See Plaintiffs’ Brief at 4-5. For the following reasons, all such allegations must be dismissed.

**A. There is No Private Right of Action Under HAMP.**

Any alleged failure to properly process or grant a HAMP loan modification is not actionable as a matter of law, because there is no private right of action under HAMP. Keosession v. Bank of America, Civ. No. 11-3478, 2012 U.S. Dist. LEXIS 16811, \*7-8 (D.N.J. Feb. 9, 2012) (“there is nothing express or implied in HAMP or its enabling legislation that creates a private right of action, and courts in the District of New Jersey and across the country have universally rejected claims such as Plaintiffs’ on that basis.”<sup>2</sup>) (citing Stolba v. Wells Fargo & Co., 10-cv-6014, 2011 U.S. Dist. LEXIS 87355 (D.N.J. Aug. 8, 2011); Wallace v. Bank of Am., 2011 U.S. Dist. LEXIS 97792 at \*2 n.3 (D.N.J. Aug. 30, 2011); Nelson v. Bank of Am., N.A., 446 Fed. Appx. 158 (11th Cir. Oct. 31, 2011) (additional citations omitted)); see also, Slimm v. Bank of Am. Corp., No. 12-5846, 2013 U.S. Dist. LEXIS 62849, at \*36 (D.N.J. May 2, 2013)<sup>3</sup> (citing Sinclair v. Citi Mortg., Inc., 519 Fed. Appx. 737 (3d Cir. Mar. 15, 2013) (additional citations omitted)); Brecker v. 1st Republic Mortgage Bankers, Inc., No. 13-5646, 2013 U.S. Dist. LEXIS 151214, at \*11 (D.N.J. Oct. 21, 2013) (“federal courts across the country have held that HAMP does not create a private right of action for borrowers.”)<sup>4</sup> (citations omitted). Consequently, Plaintiffs’ reference to “Defendants’ obligations to third parties under [HAMP]” cannot support Plaintiffs’ attempt to assert a claim against Moving Defendants and any claims arising out of HAMP must be dismissed. See Plaintiffs’ Brief at 5.

Moreover, as a matter of law, a lender has no obligation to refinance or restructure a loan. Nat’l Cmty. Bank of N.J. v. G.L.T. Indus., 276 N.J. Super. 1, 4 (App. Div. 1994). Because there

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<sup>2</sup> A true and correct copy of this opinion is attached to the Trainor Cert at Ex. B.

<sup>3</sup> A true and correct copy of this opinion is attached to the Trainor Cert at Ex. C.

<sup>4</sup> A true and correct copy of this opinion is attached to the Trainor Cert at Ex. D.

is no duty for a lender or servicer to modify a loan, Plaintiffs' statement that a lender's obligation under HAMP is "unsettled" is an inaccurate characterization. See Plaintiffs' Brief at 5. Moreover, even if Plaintiffs attempt to assert that Moving Defendants improperly denied Plaintiffs a modification under some program other than HAMP, such an allegation cannot form the basis of any viable cause of action.

**B. HARP is Inapplicable to the Plaintiffs' Claim.**

Plaintiffs' reference to the Home Affordable Refinance Program ("HARP"), and any obligation that Moving Defendants may have had under HARP, is inexplicable. While HARP is a program designed to allow borrowers to refinance their existing loans, the entirety of Plaintiffs' Complaint and letter brief is devoid of any reference to Plaintiffs' having ever applied to refinance their loan(s). As such, any reference to HARP and its characteristics, obligations, or requirements is entirely out of place and irrelevant.

**C. Plaintiffs Fail to State a Viable Claim To Suggest that the Moving Defendants Violated Any Duty of Good Faith and Fair Dealing Or The New York State Banking Department Regulations.**

Plaintiffs also claim that Moving Defendants' denial of Plaintiffs' loan modification request in June 2013 violated New York State Banking Department Regulation, Part 419.2 and that, as a result, the Moving Defendants violated the duty of good faith and fair dealing to Plaintiffs. See Plaintiffs' Brief at 5; Plaintiffs' Brief at Ex. E. As recited in Plaintiffs' Response, Part 419.2 of the New York State Banking Department Regulations provides that, "A Servicer has a duty of good faith and fair dealing in its communications, transactions, and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan." See Plaintiffs' Brief at 5. While Part 419.2 suggests that a servicer must "pursue" loss mitigation options with a borrower, nothing in the regulation affirmatively requires that a lender or servicer

modify any loan. See N.Y. Comp. Codes R. & Regs. 3 § 419.2(g). As a result, any suggestion that the Moving Defendants violated the New York State Banking Department Regulations or breached any covenant of good faith and fair dealing to Plaintiffs is unsupported and must be dismissed.

To the extent that Plaintiffs claim a breach of the duty of good faith and fair dealing in connection with a New Jersey property<sup>5</sup>, New Jersey law is clear: a lender does not breach the duty of good faith and fair dealing by failing to restructure a loan upon the request of the debtor. Nat'l Cmty Bank of N.J., 276 N.J. Super. at 4. Even if the parties have engaged in negotiations regarding a restructuring, the lender is not required to ultimately restructure the borrower's debt. CJS, 2010 LEXIS 1642 at \*18-20. See also GFS/Morristown L.P. v. Vector Whippany Assocs., No. A-1370-06T3, 2009 N.J. Super. Unpub. LEXIS 883, \*47-48 (N.J. App. Div., Apr. 2, 2009) (dismissing debtor's claim that the lender breached the covenant of good faith and fair dealing by engaging in negotiations to restructure his debt, but then ultimately refusing to restructure)<sup>6</sup>. Therefore, Plaintiffs suggestion that the Moving Defendants violated a duty of good faith and fair dealing in connection with any modification review of any of the subject mortgages is unsupported and must be dismissed.

#### **V. Plaintiffs' Newly Raised Breach of Contract Claim is Insufficiently Pled.**

Having failed to set forth a breach of contract claim or to make any assertion to remotely indicate that the Moving Defendants improperly withheld insurance proceeds in their Complaint, Plaintiffs now assert the following allegation: "Defendants breached the mortgage terms by

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<sup>5</sup> Throughout their Brief, Plaintiffs frequently refer to "the Property" despite their listing three separate properties in the original Complaint. Such use of the term "Property" makes difficult at times to determine to which property Plaintiffs are referring and only highlights the deficient nature of Plaintiffs' allegations.

<sup>6</sup> A true and correct copy of this opinion is attached to the Trainor Cert at Ex. E.

wrongfully withholding application of the insurance proceeds to principal repayment such that Plaintiffs could proceed with appropriate disposition of the property.” See Plaintiffs’ Brief at 5. For the reasons set forth in Section I above, this claim should be dismissed because it was not properly set forth in an Amended Complaint.

Even if this Court does entertain Plaintiffs’ improperly asserted breach of contract claim, that claim fails as a matter of law because Plaintiffs do not set forth any statement of their alleged damages. One indispensable element of a contract claim under both New York and New Jersey law is that damage was caused by the breach. See, e.g. Coyle v. Englander’s, 199 N.J. Super. 212, 223 (App. Div. 1985); Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522, 525 (2d Cir. 1994) (applying New York law).

Plaintiffs have not alleged any damages in connection with Moving Defendants’ alleged withholding of insurance proceeds. For instance, Plaintiffs neither assert that the insurance check remains unprocessed nor that the funds have been left unapplied.<sup>7</sup> Moreover, Plaintiffs baldly allege that Moving Defendants’ failure to apply the insurance proceeds prevented Plaintiffs from “proceed[ing] with appropriate disposition of the property.” See Plaintiffs’ Brief at 5. In stark contrast, Plaintiffs go on to state that “this loan was paid in full upon sale of the property” id., indicating that Plaintiffs were, in fact, able to dispose of the property. As such, it is unclear how, if at all, Plaintiffs were harmed by the Moving Defendants’ alleged withholding of insurance proceeds. As a result, any claim for breach of contract based on such alleged misapplication of insurance proceeds is unsupported and must be dismissed.

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<sup>7</sup> Moreover, Plaintiffs’ own Exhibit H shows that Defendant Ocwen Loan Servicing, LLC returned the insurance check and requested that Plaintiff Suzanne Koegler endorse it. Plaintiffs make no allegation that the check was properly endorsed and returned to Ocwen Loan Servicing, LLC.

**V. The United States District Court for the District of New Jersey Is Not the Proper Venue In Which To Bring Any Allegations Regarding The New York Property.**

This Court is not a proper venue for Plaintiffs' newly-raised breach of contract claim because the claim is based entirely on allegations arising in connection with the New York Property. Pursuant to 28 U.S.C. § 1391(a), a federal court action based on diversity jurisdiction may be brought "only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, [or] (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated..." or in any district having personal jurisdiction over any defendant if neither (1) nor (2) applies. (emphasis added).

Here, Plaintiffs' breach of contract claim is wholly separable from the claims against all Defendants other than the Moving Defendants. This is evidenced by the fact that Plaintiffs did not include the breach of contract claim in their original Complaint, but rather in their Response. On its own, Plaintiffs' breach of contract claim would not be proper in the District of New Jersey because it appears to relate to the New York Property. Since Plaintiffs have not, and cannot, demonstrate that Moving Defendants are all residents of New Jersey, the District of New Jersey is not a proper venue pursuant to 28 U.S.C. § 1391(a)(1). Moreover, the property at issue in Plaintiffs' breach of contract claim is located in Long Beach, New York. Therefore, the proper venue for Plaintiffs' newly-raised breach of contract claim, pursuant to 28 U.S.C. § 1391(a)(2), is the Southern District of New York.

Because Plaintiffs' breach of contract claim is a discrete and separable claim, not inextricably tied to Plaintiffs' other claims, and because the proper venue for Plaintiffs' breach of

contract claim is outside of this Court, this court should dismiss Plaintiffs' breach of contract claim based on improper venue.<sup>8</sup>

### CONCLUSION

Having now had two opportunities to plead their claims against Moving Defendants, Plaintiffs have still failed to plead any viable cause of action. For the reasons set forth above, Moving Defendants respectfully request that all claims asserted against them by Plaintiffs be dismissed, with prejudice.

Respectfully Submitted,

Dated: January 14, 2014

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<sup>8</sup> Moving Defendants did not previously waive this defense by not raising it with their original Rule 12(b)(6) motion, because Plaintiffs' Breach of Contract claim was not articulated until Plaintiffs submitted their Response.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

Edward N. Tobias and Suzanne M. Koegler,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

CIVIL ACTION

DOCKET NO.: 3:13-cv-06471

**CERTIFICATION OF MICHAEL P.  
TRAINOR, ESQ.**

Michael P. Trainor, of full age, hereby certifies and says as follows:

1. I am an attorney at law of the State of New Jersey, and am an associate with the law firm of Blank Rome, LLP, counsel for Moving Defendants, William C. Erbey, Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and GMAC Mortgage, LLC, and I have personal knowledge of the facts set forth hereafter, unless otherwise noted.

2. Attached hereto as Exhibit A is a copy of the opinion in Smithkline Beecham PLC v. Teva Pharms. USA, Inc., Nos. 04-0215, 05-0536, 2007 U.S. Dist. LEXIS 45703 (D.N.J. Jun. 22, 2007).



3. Attached hereto as Exhibit B is a copy of the opinion in Keosession v. Bank of Am., Civ. No. 11-3478, 2012 U.S. Dist. LEXIS 16811 (D.N.J. Feb. 10, 2012).

4. Attached hereto as Exhibit C is a copy of the opinion in Slimm v. Bank of Am. Corp., No. 12-5846, 2013 U.S. Dist. LEXIS 62849 (D.N.J. May 2, 2013).

5. Attached hereto as Exhibit D is a copy of the opinion in Brecker v. 1st Republic Mortgage Bankers, Inc., No. 13-5646, 2013 U.S. Dist. LEXIS 151214 (D.N.J. Oct. 21, 2013).

6. GFS/Morristown L.P. v. Vector Whippany Assocs., NO. A-1370-06T3, 2009 N.J. Super. Unpub. LEXIS 883 (N.J. App. Div., Apr. 2, 2009).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 14, 2014

/s/ Michael P. Trainor  
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**IN THE UNITED STATES DISTRICT COURT  
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DOCKET NO.: 3:13-cv-06471

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**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

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**On the Brief**

Michael P. Trainor

## TABLE OF CONTENTS

	<b>Page</b>
PRELIMINARY STATEMENT .....	1
FACTUAL BACKGROUND .....	2
LEGAL ARGUMENT .....	4
I.    Standard Of Review For Motion For Leave To Amend .....	4
II.   Plaintiffs Should Not Be Granted Leave To Amend Count III of Their Amended Complaint Because The Proposed Amendment Fails To Provide Any Facts Supporting Their Requested Relief. ....	6
A.   Plaintiffs Fail To Set Forth A Statement Of Facts To Demonstrate Plaintiffs’ Right To Relief. ....	6
III.  Plaintiffs’ Newly-Raised Fraud Claim Must Be Dismissed Because Plaintiffs Have Failed To Properly Plead Such Claim.....	7
IV.  Plaintiffs Should Not Be Granted Leave To Amend Their Claims Relating To Moving Defendants’ Failure To Modify Plaintiffs’ Loan(s) Because Plaintiffs Fail To State A Viable Cause Of Action.....	8
A.   There Is No Private Right Of Action Under HAMP.....	9
B.   HARP Is Inapplicable To The Plaintiffs’ Purported Claim. ....	10
C.   Plaintiffs Fail To State A Viable Claim To Suggest That The Moving Defendants Violated Any New York State Banking Law. ....	11
V.    Plaintiffs’ Newly Raised Breach of Contract Claim is Insufficiently Pled. ....	12
CONCLUSION.....	13

# **TABLE OF AUTHORITIES**

	Page(s)
<b>CASES</b>	
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	5, 6
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	5, 6
<i>Brecker v. 1st Republic Mortgage Bankers, Inc.</i> , No. 13-5646, 2013 U.S. Dist. LEXIS 151214 (D.N.J. Oct. 21, 2013) .....	10
<i>Coyle v. Englander's</i> , 199 N.J. Super. 212 (App. Div. 1985) .....	12
<i>Dole v. Arco Chem. Co.</i> , 921 F.2d 484 (3d Cir. 1990).....	4
<i>Dombroski v. JPMorgan Chase Bank</i> , No. 11-3771 (SRC), 2012 U.S. Dist. LEXIS 8135 (D.N.J. Jan. 24, 2012).....	5
<i>Foman v. Davis</i> , 371 U.S. 178 (1962).....	4
<i>Fowler v. UPMC Shadyside</i> , 578 F.3d 203 (3d Cir. 2009).....	6
<i>Gennari v. Weichert Co. Realtors</i> , 148 N.J. 582 (1996) .....	7
<i>Harrison Beverage Co. v. Dribeck Importers, Inc.</i> , 133 F.R.D. 463 (D.N.J. 1990).....	4, 5
<i>Hyland v. Kirkman</i> , 157 N.J. Super. 565 (Ch. Div. 1978) .....	7, 8
<i>In re Burlington Coat Factory Securities Litigation</i> , 114 F.3d 1410 (3d Cir. 1997).....	5
<i>Keosseian v. Bank of America</i> , Civ. No. 11-3478, 2012 U.S. Dist. LEXIS 16811 (D.N.J. Feb. 9, 2012) .....	9
<i>Lake v. Arnold</i> , 232 F.3d 360 (3d Cir. 2000).....	4
<i>Levinson v. D'Alfonso &amp; Stein</i> , 320 N.J. Super. 312 (App. Div. 1999) .....	8

<i>Maio v. Aetna, Inc.</i> , 221 F.3d 472 (3d Cir. 2000).....	6
<i>Morse v. Lower Merion Sch. Dist.</i> , 132 F.3d 902 (3d Cir. 1997).....	6
<i>N.J. Treas. v. Qwest Communications Int’l, Inc.</i> , 387 N.J. Super. 469 (App. Div. 2006) .....	7
<i>Nat’l Cmty. Bank of N.J. v. G.L.T. Indus.</i> , 276 N.J. Super. 1 (App. Div. 1994).....	10
<i>Nelson v. Bank of Am., N.A.</i> , 446 Fed. Appx. 158 (11th Cir. Oct. 31, 2011).....	9
<i>Nesselrotte v. Allegheny Energy, Inc.</i> , No. 06-1390, 2007 U.S. Dist. LEXIS 79147 (W.D. Pa. Oct. 25, 2007) .....	5
<i>Pension Benefit Guar. Corp. v. White Consol. Indus.</i> , 998 F.2d 1192 (3d Cir. 1993).....	6
<i>Phillips v. County of Allegheny</i> , 515 F.3d 224 (3d Cir. 2008).....	5, 6
<i>Rexnord Holdings, Inc. v. Bidermann</i> , 21 F.3d 522 (2d Cir. 1994).....	12
<i>Sinclair v. Citi Mortg., Inc.</i> , 519 Fed. Appx. 737 (3d Cir. Mar. 15, 2013) .....	10
<i>Slimm v. Bank of Am. Corp.</i> , No. 12-5846, 2013 U.S. Dist. LEXIS 62849 (D.N.J. May 2, 2013).....	10
<i>Stolba v. Wells Fargo &amp; Co.</i> , 10-cv-6014, 2011 U.S. Dist. LEXIS 87355 (D.N.J. Aug. 8, 2011) .....	9
<i>Wallace v. Bank of Am.</i> , 2011 U.S. Dist. LEXIS 97792 (D.N.J. Aug. 30, 2011).....	9

**OTHER AUTHORITIES**

Fed. R. Civ. P. 12(b)(6).....	5, 6
Fed. R. Civ. P. 15(a)(2).....	4
N.Y. Comp. Codes R. & Regs. 3 § 419.2(g).....	12

### **PRELIMINARY STATEMENT**

In their proposed Amended Complaint, Plaintiffs once again feebly attempt to assert a variety of unsupported claims against Defendants William C. Erbey ("Erbey"), GMAC Mortgage, LLC, incorrectly named as GMAC Mortgage Co., LLC ("GMAC"), Ocwen Financial Corporation and Ocwen Loan Servicing, LLC (collectively, "Ocwen") (collectively, Erbey, Ocwen and GMAC shall be referred to herein as the "Moving Defendants") that are built upon nothing more than bald assertions and sweeping legal conclusions. Plaintiffs now baldly state that they are seeking redress via the following six legal theories: (1) fraud; (2) violations of unspecified NY Banking Law; (3) HAMP; (4) HARP; (5) breach of contract; and (6) tortious interference with contract. Critically, rather than assert separate facts to suggest how they are entitled to relief under any of these legal theories, Plaintiffs do nothing more than baldly suggest that evidence to support their theories will be obtained during discovery. Such a suggestion, without more, is entirely deficient and any attempt by Plaintiffs to amend their Complaint should be dismissed for what it is, a baseless fishing expedition.

In addition to the fact that Plaintiffs acknowledge that they base the entirety of their purported claims on the hope that something will turn up in discovery, the structure of Plaintiffs' Amended Complaint is entirely deficient and provides no clarity regarding what specific claims are being brought against Moving Defendant. In their original Complaint, Plaintiffs completely failed to identify the specific legal theories upon which they had based their claims against Moving Defendant. In an attempt to remedy this obvious deficiency, Plaintiffs have now made passing reference to the above cited six legal theories. Incredibly, rather than setting forth each of the six theories in a separately articulated claim, Plaintiffs lump all of these allegedly "new" legal theories under the general umbrella of Count III of their Amended Complaint. As such, it

is still entirely unclear whether Plaintiffs are attempting to set forth one or six separate causes of action under their generally titled Count III.

Despite these cosmetic changes, as with the entirety of their original Complaint, Plaintiffs once again provide a skeletal claim built from nothing more than bald assertion and conclusion. As a result, Plaintiffs have left Moving Defendants to guess as to the factual underpinning, if any, of such claims. Consequently, Plaintiffs should not be granted leave to pursue any such deficient claims. Moreover, Moving Defendants request that their pending motion to dismiss those portions of the Plaintiff's complaint pertaining to Moving Defendants be granted.

### **FACTUAL BACKGROUND**

Plaintiffs initially embarked on this ill fated fishing expedition seeking, *inter alia*, payment relating to damage that was allegedly caused to the following three properties by Superstorm Sandy: (1) 93 Wisconsin Street, Long Beach, NY; (2) 75 Princeton Oval, Freehold, NJ; and (3) 226 Richwood Road, Mullica Hill, NJ. *See* Compl. at Count III, ¶1. Critically, at no point do the Plaintiffs specifically identify in their Complaint or their Amended Complaint how Plaintiffs caused damage to any of the three properties.

Also, as was the case in their original Complaint, in their poorly constructed Amended Complaint, Plaintiffs yet again appear to set forth three causes of action. However, Plaintiffs only seek relief as to the Moving Defendants in their third "Count" or Count III. *See* Amended Compl. at Count III. Count III of the Amended Complaint is, from a substantive standpoint, a verbatim recitation of Count III of the original Complaint. The following numbered paragraphs constitute the entirety of paragraphs 1 through 4 of Plaintiffs' Count III. The emphasized portions reflect the only differences between the original Complaint and the Amended Complaint as it pertains to Count III and any allegations against Moving Defendants.

1. Plaintiffs own or have owned the following properties located at: 93 Wisconsin Street, Long Beach, Nassau County, New York (Nassau County residence); 75 Princeton Oval, Freehold, Monmouth County, New Jersey (Monmouth County residence); and 226 Richwood Road, Mullica Hill, Gloucester County, New Jersey (Gloucester County residence).
2. Upon information and belief, defendants wrongfully engaged in illegal or other adverse actions that negatively affected the nationwide real estate market resulting in untrue and inaccurate property values at the time the plaintiffs purchased the properties. *This Count of the Complaint is more specifically plead as requesting relief against Defendant, GMAC Mortgage, LLC on the basis of fraud, whether by common law, state law, or federal law as discovery in this matter should evidence.*
3. After Superstorm Sandy, the plaintiffs contacted defendants and requested assistance according to the terms of the mortgage on the property and obligations accepted by defendants under various federal and state programs dealing with the “mortgage crisis.” *This Court is more specifically plead as requesting relief against the Moving Defendants under NYS Banking Law and HAMP and HARP to the extent Defendant owes duties to third parties as such Plaintiffs.*
4. Defendants failed according to the terms of the mortgage contract and third-party obligations imposed or entered into by them various federal and state programs to adequately compensate plaintiffs for damages sustained as a result of their wrongful acts. *This Count of the Complaint is more specifically plead as requesting relief against Defendants, GMAC Mortgage, LLC and Ocwen on the basis of breach of*



*contract and tortuous interference with contract as discovery in this matter should evidence.*

See Amended Compl. at Count III, ¶¶1-4.

Despite these “amended” allegations, at no point do the Plaintiffs specify what actions Moving Defendants allegedly took or failed to take or how any such actions, or inaction, caused Plaintiffs any damage. Simply, Plaintiffs have done nothing to fix the problems with their original Complaint and only rely on further legal supposition in a weak attempt to create a claim out of thin air. Without some shred of facts to support their allegations, Plaintiffs have once again failed to sufficiently set forth any cognizable claim against Moving Defendants. As such, and for the reasons set forth more fully below, Plaintiffs’ Motion for Leave to Amend must be denied and the entirety of Plaintiffs’ claims against Moving Defendants must be dismissed.

### **LEGAL ARGUMENT**

#### **I. Standard Of Review For Motion For Leave To Amend**

Pursuant to Fed. R. Civ. P. 15(a)(2), a party may amend a pleading only with the opposing party’s written consent or the Court’s leave. Although the Rules provide that “[t]he court should freely give leave when justice so requires,” it is not “unbounded.” *Dole v. Arco Chem. Co.*, 921 F.2d 484, 487 (3d Cir. 1990). Rather, the moving party retains the burden to show that “justice requires the amendment.” *Harrison Beverage Co. v. Dribeck Importers, Inc.*, 133 F.R.D. 463, 468 (D.N.J. 1990).

“A district court may deny leave to amend a [pleading] where ‘it is apparent from the record that (1) the moving party has demonstrated undue delay, bad faith or dilatory motives, (2) the amendment would be futile, or (3) the amendment would prejudice the other party.’” *Lake v. Arnold*, 232 F.3d 360, 373 (3d Cir. 2000) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962))(Emphasis Added). In determining whether an amendment would be futile, courts apply

the same failure to state a claim upon which relief could be granted standard as is mandated by Fed. R. Civ. P. 12(b)(6). *Dombroski v. JPMorgan Chase Bank*, No. 11-3771 (SRC), 2012 U.S. Dist. LEXIS 8135, at \*7-8 (D.N.J. Jan. 24, 2012); *see also Nesselrotte v. Allegheny Energy, Inc.*, No. 06-1390, 2007 U.S. Dist. LEXIS 79147, at \*16 (W.D. Pa. Oct. 25, 2007) (“In assessing futility, the Court applies the same standard of legal sufficiency as applied under Rule 12(b)(6).”) (citing *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410, 1434 (3d Cir. 1997)). “[I]f the proposed amendment is frivolous or advances a claim or defense that is legally insufficient on its face, the court may deny leave to amend.” *Harrison Beverage Co.*, 133 F.R.D. at 469.

A complaint will survive a motion under Rule 12(b)(6) only if it states “sufficient factual allegations, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint must contain sufficient factual allegations to raise a right to relief above the speculative level, assuming the factual allegations are true. *Twombly*, 550 U.S. at 555; *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008).

The Supreme Court has made clear that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original); *see also Iqbal*, 556 U.S. at 679 (“While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.”). Thus, conclusory allegations of law, inferences unsupported by facts, or a formulaic recitation of the elements will not defeat a Rule 12(b)(6) motion. *Id.*; *Twombly*, 550 U.S. at 555. While a court will accept well-pled allegations as true for the purposes of the

motion, it will not accept bald assertions, unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations. *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

The Third Circuit, following *Twombly* and *Iqbal*, has held that the pleading standard of Rule 8(a) “requires not merely a short and plain statement, but instead mandates a statement ‘showing that the pleader is entitled to relief.’” *Phillips*, 515 F.3d at 234. In a Rule 12(b)(6) motion, the Court is limited in its review to a few basic documents: the complaint, exhibits attached to the complaint, matters of public record, and undisputedly authentic documents if the complainant’s claims are based upon those documents. See *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). A court need not accept bald assertions, unwarranted inferences or legal conclusions. *Maio v. Aetna, Inc.*, 221 F.3d 472, 485 n.12 (3d Cir. 2000). In deciding whether to dismiss a complaint, courts must separate the legal elements and factual allegations of the claim, accepting the well-pleaded facts but disregarding the legal conclusion. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009).

**II. Plaintiffs Should Not Be Granted Leave To Amend Count III of Their Amended Complaint Because The Proposed Amendment Fails To Provide Any Facts Supporting Their Requested Relief.**

Plaintiffs should not be granted leave to amend and their claim against Moving Defendants should be dismissed because Plaintiffs have failed to plead a statement of facts demonstrating that Plaintiffs are entitled to any relief. As such, Plaintiffs’ claim fails to meet the pleading standard set forth in *Iqbal* and *Twombly*.

**A. Plaintiffs Fail To Set Forth A Statement Of Facts To Demonstrate Plaintiffs’ Right To Relief.**

Plaintiffs once again fail to provide *any* statement of facts demonstrating a plausible right to relief. Plaintiffs’ assertion that Moving Defendants “negatively affected the nationwide real

estate market” is a bald, conclusory allegation. *See* Amended Compl. at Count III, ¶ 2. Plaintiffs do not identify a single action that Moving Defendants took to bring about the result that Plaintiffs assert. Nor do Plaintiffs provide a plausible explanation for how Moving Defendants’ unspecified actions brought about the asserted result.

Plaintiffs also baldly assert that “Defendants failed according to the terms of the mortgage contract and third-party obligations imposed or entered into by them various federal and state programs.” *See* Amended Compl. at Count III, ¶ 4. However, Plaintiffs never identify what actions or inactions constitute Moving Defendants’ alleged failure or what it was that Moving Defendants “failed” to do. As such, Count III of Plaintiffs’ Amended Complaint lacks sufficient factual allegations to demonstrate a plausible right to relief and Plaintiffs should not be granted leave to amend.

**III. Plaintiffs’ Newly-Raised Fraud Claim Must Be Dismissed Because Plaintiffs Have Failed To Properly Plead Such Claim.**

As set forth above, Plaintiffs make passing reference in Count III to an alleged fraud committed by GMAC. Rather than setting forth a separate and distinct fraud claim, Plaintiffs do nothing more than baldly state that fraud was committed in one paragraph of Count III. Such an assertion, without any facts to support it, is woefully deficient.

To state a viable counterclaim for common law fraud under New Jersey law, Plaintiffs must allege with the requisite degree of specificity (1) that Plaintiff made a material misrepresentation; (2) that Plaintiff knew the misrepresentation was false; (3) that Plaintiff intended that Defendants would rely on the misrepresentation; (4) that Defendants did reasonably rely on the misrepresentation; and (5) resulting damages. *See Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 610 (1996); *N.J. Treas. v. Qwest Communications Int’l., Inc.*, 387 N.J. Super. 469, 485 (App. Div. 2006). Allegations of fraud may not be pled generally. *Hyland v. Kirkman*, 157

N.J. Super. 565, 584-85 (Ch. Div. 1978). Rather, specific facts must support a fraud allegation. *Id.* A claim for fraud should be dismissed if it fails to satisfy the specificity requirement, or if it fails to set forth the requisite elements. *Levinson v. D'Alfonso & Stein*, 320 N.J. Super. 312, 315 (App. Div. 1999) (affirming dismissal of a claim for fraud, in part, due to lack of specificity and failure to set forth the elements of a fraud claim).

In paragraph 2 of Count III of their Amended Complaint, Plaintiffs baldly allege that they are seeking relief only against GMAC “on the basis of fraud, whether by common law, state law, or federal law as discovery in this matter should evidence.” *See* Amend. Compl. at Count III, ¶2. While Plaintiffs refer obliquely to some alleged “fraud”, Plaintiffs do not specifically state what, if any, actions GMAC, or any of the other Moving Defendant, took that constituted fraud. In fact, they completely fail to identify any facts to support any of the five elements required to set forth a fraud claim (i.e., there is no suggestion of (1) any material misrepresentation; (2) whether GMAC knew the misrepresentation was false; (3) that GMAC intended that Plaintiffs would rely on the misrepresentation; (4) that Plaintiffs did reasonably rely on the misrepresentation; and (5) resulting damages). Such allegations, without more, are woefully deficient. As such, Plaintiffs’ request for leave to amend their Complaint must be denied, because the entirely deficient proposed Amended Complaint would be futile.

**IV. Plaintiffs Should Not Be Granted Leave To Amend Their Claims Relating To Moving Defendants’ Failure To Modify Plaintiffs’ Loan(s) Because Plaintiffs Fail To State A Viable Cause Of Action.**

Plaintiffs originally alleged in their Complaint that they requested modification assistance from the Moving Defendants and that the Moving Defendants failed to provide any such assistance “according to the terms of the mortgage contract” and “obligations accepted by the [Moving D]efendants under various federal and state programs.” *See* Complaint at Count III, ¶4. In making the exact same statements in the Amended Complaint, Plaintiffs have once again

failed to identify which mortgage(s) had been violated, which terms of the mortgage(s) had been violated, which state or federal program(s) imposed obligations upon the Moving Defendants, and how any such obligation had been violated.

Moreover, as with their deficient attempt at a fraud claim, Plaintiffs do not even try to set forth some specifically articulated claim pertaining to the alleged modification review of the subject loan. Rather, while still not identifying any specific mortgage terms that impose an obligation on the Moving Defendants to assist Plaintiffs, Plaintiffs now generally appear to assert that Moving Defendants have violated certain unidentified obligations under the Home Affordable Modification Program (“HAMP”) the Home Affordable Refinance Program (“HARP”). Plaintiffs also appear to suggest that Moving Defendants violated and an unspecified provision of “NYS Banking Law.” *See* Amended Compl. at ¶3. For the following reasons, all such allegations are deficient and futile and Plaintiffs should not be given leave to amend any such baseless claims.

**A. There Is No Private Right Of Action Under HAMP.**

Any alleged failure to properly process or grant a HAMP loan modification is not actionable as a matter of law, because there is no private right of action under HAMP. *Keosseian v. Bank of America*, Civ. No. 11-3478, 2012 U.S. Dist. LEXIS 16811, \*7-8 (D.N.J. Feb. 9, 2012) (“there is nothing express or implied in HAMP or its enabling legislation that creates a private right of action, and courts in the District of New Jersey and across the country have universally rejected claims such as Plaintiffs’ on that basis.<sup>1</sup>”) (citing *Stolba v. Wells Fargo & Co.*, 10-cv-6014, 2011 U.S. Dist. LEXIS 87355 (D.N.J. Aug. 8, 2011); *Wallace v. Bank of Am.*, 2011 U.S. Dist. LEXIS 97792 at \*2 n.3 (D.N.J. Aug. 30, 2011); *Nelson v. Bank of Am., N.A.*, 446

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<sup>1</sup> A true and correct copy of this opinion is attached to the Trainor Cert at Ex. A.

Fed. Appx. 158 (11th Cir. Oct. 31, 2011) (additional citations omitted)); *see also*, *Slimm v. Bank of Am. Corp.*, No. 12-5846, 2013 U.S. Dist. LEXIS 62849, at \*36 (D.N.J. May 2, 2013)<sup>2</sup> (citing *Sinclair v. Citi Mortg., Inc.*, 519 Fed. Appx. 737 (3d Cir. Mar. 15, 2013) (additional citations omitted)); *Brecker v. 1st Republic Mortgage Bankers, Inc.*, No. 13-5646, 2013 U.S. Dist. LEXIS 151214, at \*11 (D.N.J. Oct. 21, 2013) (“federal courts across the country have held that HAMP does not create a private right of action for borrowers.”)<sup>3</sup> (citations omitted). Consequently, Plaintiffs’ completely bald suggestion that they are somehow entitled to relief under “HAMP...to the extent Defendant owes duties to third parties such as Plaintiffs” is baseless.

Moreover, as a matter of law, a lender has no obligation to refinance or restructure a loan. *Nat’l Cmty. Bank of N.J. v. G.L.T. Indus.*, 276 N.J. Super. 1, 4 (App. Div. 1994). Because there is no duty for a lender or servicer to modify a loan, Plaintiffs’ bald statement in connection with HAMP is entirely unsupported and any amendment as Plaintiffs currently propose would be futile. Even if Plaintiffs’ attempt to assert that Moving Defendants improperly denied Plaintiffs a modification under HAMP or any other program, such an allegation cannot form the basis of any viable cause of action. Consequently, Plaintiffs must not be granted leave to amend.

**B. HARP Is Inapplicable To The Plaintiffs’ Purported Claim.**

Plaintiffs’ reference to the Home Affordable Refinance Program (“HARP”), and any obligation that Moving Defendants may have under HARP, is inexplicable. While HARP is a program designed to allow borrowers a chance to refinance their existing loans, the entirety of Plaintiffs’ Amended Complaint is devoid of any reference to Plaintiffs’ having ever applied to refinance their loan(s). As such, any reference to HARP and its characteristics, obligations, or

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<sup>2</sup> A true and correct copy of this opinion is attached to the Trainor Cert at Ex. B.

<sup>3</sup> A true and correct copy of this opinion is attached to the Trainor Cert at Ex. C.

requirements is entirely out of place and irrelevant and Plaintiffs' illogical attempt to amend should be denied.

**C. Plaintiffs Fail To State A Viable Claim To Suggest That The Moving Defendants Violated Any New York State Banking Law.**

Plaintiffs also baldly allege in Count III that they are entitled to relief under an unspecified "NYS Banking Law." As with the entirety of their other claims, Plaintiffs set forth absolutely no facts to remotely indicate what specific New York Banking Law was violated or how Moving Defendants violated such law. In their Brief in Opposition to the Moving Defendants' Motion to Dismiss Plaintiff's Original Complaint, Plaintiffs appeared to suggest that Moving Defendants' denial of Plaintiffs' loan modification request in June 2013 violated New York State Banking Department Regulation, Part 419.2 and that, as a result, the Moving Defendants violated the duty of good faith and fair dealing to Plaintiffs. *See* Plaintiffs' Brief in Opposition to Moving Defendants' Motion to Dismiss at 5; Plaintiffs' Brief at Ex. E. Despite the improper attempt to set forth some form of alleged violation in their prior brief, Plaintiffs completely fail to set forth any new and specific facts in connection with any such possible claim in their Amended Complaint. As a result, Moving Defendants cannot reasonably be asked to speculate as to the true nature of any claim founded in an alleged violation of a "NYS Banking Law" or New York State Banking Department Regulation, Part 419.2.

To the extent Plaintiffs are attempting to set forth some unspecified claim under Part 419.2 in their Amended Complaint, as recited in Plaintiffs' own Responsive Brief to the Moving Defendants' prior Motion to Dismiss, Part 419.2 of the New York State Banking Department Regulations provides that, "A Servicer has a duty of good faith and fair dealing in its communications, transactions, and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan." *See* Plaintiffs' Brief at 5. While Part 419.2 suggests



that a servicer must “pursue” loss mitigation options with a borrower, nothing in the regulation affirmatively requires that a lender or servicer modify any loan. *See* N.Y. Comp. Codes R. & Regs. 3 § 419.2(g). As a result, any suggestion that the Moving Defendants violated the New York State Banking Department Regulations is unsupported and Plaintiffs’ attempt to amend is futile.

**V. Plaintiffs’ Newly Raised Breach of Contract Claim is Insufficiently Pled.**

Having failed to set forth a breach of contract claim in their original Complaint, Plaintiffs now baldly assert that GMAC and Ocwen breached an unspecified contract with Plaintiffs and also tortiously interfered with an unspecified contract. As with the entirety of their other claims, Plaintiffs once again completely fail to set forth any facts to remotely identify the basis for such claims.

For starters, Plaintiffs fail to identify what contract was breached or how Moving Defendants tortiously interfered with any contract. Plaintiffs also completely fail to set forth any statement of their alleged damages in connection with their “breach of contract” and “tortuous interference” claims. One indispensable element of a contract claim under both New York and New Jersey law is that damage must be caused by the breach. *See, e.g. Coyle v. Englander’s*, 199 N.J. Super. 212, 223 (App. Div. 1985); *Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 525 (2d Cir. 1994) (applying New York law). Plaintiffs have not alleged any damages in connection with Moving Defendants’ alleged breach or interference. As such, any such claims are woefully deficient.

Similar to their general “NYS Banking Law” claims, Plaintiffs tried to bolster their contract related claims in their Opposition to Moving Defendants’ Motion to Dismiss the Original Complaint. In particular, Plaintiffs claimed in their Brief that Moving Defendants’ failed to apply some unspecified insurance proceeds and, in doing so, prevented Plaintiffs from

“proceed[ing] with appropriate disposition of the property.” *See* Plaintiffs’ Brief at 5. Again, despite these references in prior submissions to the Court, Plaintiffs completely fail to assert any similar facts in their Amended Complaint. As such, it remains unclear how, if at all, Plaintiffs were harmed by the Moving Defendants’ alleged withholding of any insurance proceeds. It is equally unclear what alleged contract was breached, whether such contract was related to some unspecified withholding of insurance proceeds, or how GMAC or Ocwen tortuously interfered with any such contract. As a result, because the basis for Plaintiffs’ alleged breach of contract and tortuous interference claims remains entirely unknown, Plaintiffs must not be granted leave to amend.

### **CONCLUSION**

For the reasons set forth above, Moving Defendants respectfully request that this Court deny Plaintiffs’ Motion for Leave to File an Amended Complaint. Moving Defendants also renew their pending request to dismiss Plaintiff’s original Complaint.

Respectfully Submitted,

Dated: May 5, 2014

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*Ocwen Loan Servicing, LLC,*  
*and GMAC Mortgage, LLC*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

Edward N. Tobias and Suzanne M. Koegler,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

CIVIL ACTION

DOCKET NO.: 3:13-cv-06471

**CERTIFICATION OF MICHAEL P.  
TRAINOR, ESQ.**

Michael P. Trainor, of full age, hereby certifies and says as follows:

1. I am an attorney at law of the State of New Jersey, and am an associate with the law firm of Blank Rome, LLP, counsel for Defendants William C. Erbey, Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and GMAC Mortgage, LLC, and I have personal knowledge of the facts set forth hereafter, unless otherwise noted.

2. Attached hereto as Exhibit A is a copy of the opinion in Keosseian v. Bank of Am., Civ. No. 11-3478, 2012 U.S. Dist. LEXIS 16811 (D.N.J. Feb. 10, 2012).

3. Attached hereto as Exhibit B is a copy of the opinion in Slimm v. Bank of Am.

Corp., No. 12-5846, 2013 U.S. Dist. LEXIS 62849 (D.N.J. May 2, 2013).

4. Attached hereto as Exhibit C is a copy of the opinion in Brecker v. 1st Republic Mortgage Bankers, Inc., No. 13-5646, 2013 U.S. Dist. LEXIS 151214 (D.N.J. Oct. 21, 2013).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 5, 2014

/s/ Michael P. Trainor

Michael P. Trainor

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

-----X	:	
EDWARD N. TOBIAS and,	:	
SUZANNE M. KOEGLER,	:	
	:	Civil Action No.
Plaintiffs,	:	3:13-cv-06471-PGS-TJB
	:	
-against-	:	
	:	
UNITED STATES OF AMERICA, et.al.,	:	
	:	
Defendants.	:	
-----X	:	

**GMAC MORTGAGE, LLC'S NOTICE OF BANKRUPTCY STATUS**

GMAC Mortgage, LLC ("GMACM") by and through its undersigned counsel, respectfully submits this Notice of Bankruptcy Status, and states as follows:

1. On May 14, 2012 (the "Petition Date"), Residential Capital, LLC and certain of its direct and indirect subsidiaries, including GMACM (collectively, the "Debtors"), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors' Chapter 11 cases (the "Bankruptcy Cases") are being jointly administered, indexed at case number 12-12020 (MG).

2. On August 29, 2012, the Bankruptcy Court entered an order, among other things, establishing a deadline and procedures for filing of proofs of claim and approving the

form and manner of notice thereof [Docket No. 1309] (the “Bar Date Order”). Paragraph 11 of the Bar Date Order requires that any party asserting a claim against one of the Debtors must file a claim in the Debtors’ bankruptcy cases to preserve the claims against GMACM. A party that fails to file a proof of claim is “forever barred, estopped and enjoined from asserting such claim against the Debtors. . . .” (Bar Date Order, ¶ 11.)

3. On December 11, 2013, the Bankruptcy Court entered its 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”) [Bankruptcy Docket 6065]<sup>1</sup> approving the terms of the Chapter 11 plan, as amended (the “Plan”). The effective date under the Plan occurred on December 17, 2013 (the “Effective Date”).

4. Both the Plan and Confirmation Order provide for the extension of the automatic stay through the Effective Date and provide that the injunctive provisions of the Plan and Confirmation Order will remain in full force and effect following the Effective Date. (Confirmation Order, ¶ 63(g); Plan, Art. XIII.K). **Moreover, both Section G of Paragraph 40 of the Confirmation Order and Article IX.I of Plan contain an “Injunction” provision that, among other things, enjoins all parties from “commencing or continuing in any manner or action or other proceeding of any kind” relating to claims that are released under the Plan.**

5. In addition, pursuant to Article XII of the Plan and Paragraph 66 of the Confirmation Order, the Bankruptcy Court retained exclusive jurisdiction to hear all matters pertaining to the injunction provided for in the Plan and Confirmation Order. Specifically, the Plan provides as follows:

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<sup>1</sup> Due to its voluminous nature, the Confirmation Order, to which the Plan is an exhibit, is not included as an attachment, but a copy of the Confirmation Order and the Plan may be obtained at no charge at <http://www.kccllc.net/rescap>

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction:

...

**(c) to hear and determine any matter, case, controversy, suit, dispute, or Causes of Action: (i) regarding the existence, nature, and scope of the releases, injunctions, and exculpation provided under the Plan, and (ii) enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;**

....

(Plan, Art. XII) (emphasis added). In addition, the Confirmation Order provides as follows:

**Retention of Jurisdiction.** The business and assets of the Debtors shall remain subject to the jurisdiction of this Court until the Effective Date. Notwithstanding the entry of this Order, from and after the Effective Date, the Court shall retain such jurisdiction over the Chapter 11 Cases as is legally permissible, including jurisdiction over those matters and issues described in Article XII of the Plan, including with respect to (i) insurance settlements and disputes involving insurance policies settled or otherwise addressed under or in connection with the Plan, and (ii) the Claims filed by WFBNA in these Chapter 11 Cases and any Claims or Causes of Action that may be asserted by WFBNA against any of the Ally Released Parties.

(Confirmation Order, ¶ 66).

6. According to the Debtors' records, Plaintiffs have filed one or more proofs of claim in the Bankruptcy Cases ("Borrowers' Claims"). Section 362(c)(2)(A) provides that the automatic stay imposed by Section 362(a) continues until the time the case is closed. Notwithstanding entry of the Confirmation Order, the Debtors' bankruptcy case remains open, and any attempt to prosecute a claim for monetary relief is subject to the automatic stay. Accordingly, the claims asserted against GMACM in this present action are not allowed to proceed. The validity and enforceability of Borrowers' Claims will be resolved by the Borrower

Claims Trust in accordance with the claims resolution process established by the Plan and Confirmation Order.

Respectfully submitted this 19th day of May, 2014.

TROUTMAN SANDERS LLP

By: s/ Mark I. Schlesinger  
Mark I. Schlesinger

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*GMAC Mortgage, LLC*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW JERSEY**

-----X	:	
EDWARD N. TOBIAS and,	:	
SUZANNE M. KOEGLER,	:	
	:	Civil Action No.
Plaintiffs,	:	3:13-cv-06471-PGS-TJB
	:	
-against-	:	
	:	
UNITED STATES OF AMERICA, et.al.,	:	
	:	
Defendants.	:	
-----X	:	

**DEFENDANT GMAC MORTGAGE, LLC'S NOTICE  
 OF WITHDRAWAL FROM MOTIONS**

PLEASE TAKE NOTICE that defendant GMAC Mortgage, LLC hereby withdraws from the pending motion to dismiss [Dkt. No. 8] and from the opposition to the pending motion to amend [Dkt. No. 54].

Dated: May 19, 2014

TROUTMAN SANDERS LLP

By: s/ Mark I. Schlesinger  
 Mark I. Schlesinger

*Attorneys for Defendant*  
*GMAC Mortgage, LLC*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEW JERSEY**

**(609) 989-2040**

**CHAMBERS OF**

**TONIANNE J. BONGIOVANNI**  
**UNITED STATES MAGISTRATE JUDGE**

**U.S. COURTHOUSE**  
**402 E. STATE STREET, RM 6052**  
**TRENTON, NJ 08608**

May 20, 2014

**LETTER ORDER**

**Re: Edward N. Tobias, et al. v. United States of America, et al.**  
**Civil Action No. 13-6471 (PGS)**

Dear Counsel:

As discussed during today's status conference, the pending Motions to Dismiss [Docket Entries Nos. 8, 36, & 41] are administratively terminated without prejudice pending this Court's decision on Plaintiff's Motion to Amend/Correct Complaint [Docket Entry No. 54]. Following entry of an order on the Motion to Amend, the Motions to Dismiss may, at the request of counsel, be reactivated in their current form or revised if appropriate. Additionally, the State of New Jersey's right to seek dismissal pursuant to Case Management Order No. 1 [Docket Entry No. 45] is preserved. Discovery is hereby stayed pending resolution of the Motions.

**IT IS SO ORDERED.**

**IT IS FURTHER ORDERED THAT THE CLERK OF THE COURT  
ADMINISTRATIVELY TERMINATE THE PENDING MOTIONS TO  
DISMISS (DOCKET ENTRIES NOS. 8, 36, & 41) ACCORDINGLY.**

s/ Tonianne J. Bongiovanni  
**TONIANNE J. BONGIOVANNI**  
**United States Magistrate Judge**