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

_____)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
_____)	

**RESCAP BORROWER CLAIMS TRUST'S
SEVENTY-SIXTH OMNIBUS OBJECTION TO CLAIMS
(NO LIABILITY BORROWER CLAIMS)**

THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE CERTAIN FILED PROOFS OF CLAIM. CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON EXHIBIT A ATTACHED TO THE PROPOSED ORDER.

IF YOU HAVE QUESTIONS, PLEASE CONTACT THE RESCAP BORROWER CLAIMS TRUST'S COUNSEL, JORDAN A. WISHNEW, AT (212) 468-8000.



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TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

The ResCap Borrower Claims Trust (the “Borrower Trust”), established pursuant to the terms of the Chapter 11 plan confirmed in the above captioned bankruptcy cases (the “Chapter 11 Cases”), as successor in interest to the above-captioned debtors (collectively, the “Debtors”) with regards to Borrower Claim (defined below) matters, by and through its undersigned counsel, respectfully represents:

RELIEF REQUESTED

1. The Borrower Trust files this seventy-sixth omnibus objection to claims (the “Objection”) pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and this Court’s order approving procedures for the filing of omnibus objections to proofs of claim filed in these Chapter 11 Cases (the “Procedures Order”) [Docket No. 3294], and seeks entry of an order (the “Proposed Order”), in a form substantially similar to that attached hereto as Exhibit 1, to disallow and expunge the claims listed on Exhibit A¹ annexed to the Proposed Order. In support of this Objection, the Borrower Trust submits the Declaration of Kathy Priore, Associate Counsel for the ResCap Liquidating Trust (the “Priore Declaration,” attached hereto as Exhibit 2), and the Declaration of Norman S. Rosenbaum of Morrison & Foerster LLP, counsel to the Borrower Trust (the “Rosenbaum Declaration,” attached hereto as Exhibit 3).

2. The Borrower Trust examined the proofs of claim identified on Exhibit A to the Proposed Order and determined that the proofs of claim listed on Exhibit A (collectively, the “No Liability Borrower Claims”) are not liabilities of the Debtors. This determination was

¹ Claims listed on Exhibit A are reflected in the same manner as they appear on the claims register maintained by KCC (defined herein).

made after the holders of the No Liability Borrower Claims were given an opportunity under the Procedures Order to supply additional documentation to substantiate their respective claims. Accordingly, the Borrower Trust seeks entry of the Proposed Order disallowing and expunging the No Liability Borrower Claims from the Claims Register.

3. The proofs of claim identified on Exhibit A annexed to the Proposed Order solely relate to claims filed by current or former borrowers (collectively, the “Borrower Claims” and each a “Borrower Claim”). As used herein, the term “Borrower” means 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.²

4. The Borrower Trust expressly reserves all rights to object on any other basis to any No Liability Borrower Claim as to which the Court does not grant the relief requested herein.

JURISDICTION

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

General Case Background

6. On May 14, 2012 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

² The terms “Borrower” and “Borrower Claims” are identical to those utilized in the Procedures Order [Docket No. 3294].

7. On May 16, 2012, the United States Trustee for the Southern District of New York appointed a nine member official committee of unsecured creditors [Docket No. 102] (the “Creditors’ Committee”).

8. On December 11, 2013, the Court entered the *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the “Confirmation Order”) approving the terms of the Chapter 11 plan, as amended (the “Plan”), filed in these Chapter 11 Cases [Docket No. 6065]. On December 17, 2013, the effective date of the Plan occurred, and, among other things, the Borrower Trust was established [Docket No. 6137].

9. The Plan provides for the creation and implementation of the Borrower Trust, which is established for the benefit of Borrowers who filed Borrower Claims to the extent such claims are ultimately allowed either through settlement with the Borrower Claims Trustee or pursuant to an Order of the Court. See Plan, at Art. IV.F. The Borrower Trust was established to, among other things, “(i) direct the processing, liquidation and payment of the Allowed Borrower Claims in accordance with the Plan, and the distribution procedures established under the Borrower Claims Trust Agreement, and (ii) preserve, hold, and manage the assets of the Borrower Claims Trust for use in satisfying Allowed Borrower Claims.” See id.

Claims-related Background

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

11. On August 29, 2012, this Court entered an order approving the Debtors' motion to establish procedures for filing proofs of claim in the Chapter 11 Cases [Docket No. 1309] (the "Bar Date Order"). The Bar Date Order established, among other things, (i) November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to file proofs of claim by virtually all creditors against the Debtors (the "General Bar Date") and prescribing the form and manner for filing proofs of claim; and (ii) November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for governmental units to file proofs of claim (the "Governmental Bar Date"). Bar Date Order ¶¶ 2, 3. On November 7, 2012, the Court entered an order extending the General Bar Date to November 16, 2012 at 5:00 p.m. (Prevailing Eastern Time) [Docket No. 2093]. The Governmental Bar Date was not extended.

12. On March 21, 2013, the Court entered the Procedures Order, which authorizes the Debtors to, among other things, file omnibus objections to no more than 150 claims at a time, on various grounds, including those set forth in Bankruptcy Rule 3007(d) and those additional grounds set forth in the Procedures Order. See Procedures Order at 2-3.

13. Based on substantial input from counsel to the Creditors' Committee and its special counsel for Borrower issues, SilvermanAcampora LLP ("Special Counsel"), the Procedures Order includes specific protections for Borrowers and sets forth a process for the Debtors or any successor in interest to follow before objecting to certain categories of Borrower Claims (the "Borrower Claim Procedures"). The Borrower Claim Procedures provide, *inter alia*, that prior to objecting to Borrower Claims filed with no or insufficient documentation, the Debtors must send each such Borrower claimant a letter requesting additional documentation in support of the purported claim (the "Request Letter"). See Procedures Order at 4.

14. Beginning in May of 2013, the Debtors sent Request Letters, substantially in the form as those attached as Exhibit 4, to those Borrowers who filed the No Liability

Borrower Claims with insufficient documentation. The Request Letters state that the claimant must respond within thirty (30) days (the “Response Deadline”) with an explanation that states the legal and factual reasons why the claimant believes it is owed money or is entitled to other relief from the Debtors and the claimant must provide copies of any and all documentation that the claimant believes supports the basis for its claim. See Request Letters at 1. The Request Letters further state that if the claimant does not provide the requested explanation and supporting documentation within 30 days, then the Debtors may file a formal objection to the claimant’s claim, seeking to have the claim disallowed and permanently expunged. Id.

15. The Response Deadline has passed, and the Debtors and the Borrower Trust either did not receive any response to the Request Letters or received insufficient information to establish a basis for liability with respect to the applicable No Liability Borrower Claims. See Priore Declaration at ¶ 4.

**THE NO LIABILITY BORROWER CLAIMS
SHOULD BE DISALLOWED AND EXPUNGED**

16. Based upon its review of the No Liability Borrower Claims identified on Exhibit A annexed to the Proposed Order, the Borrower Trust determined that they do not represent valid prepetition claims against the Debtors and should be expunged. If the No Liability Borrower Claims are not disallowed and expunged, then the parties who filed these proofs of claim may receive a wholly improper recovery to the detriment of other Borrowers who hold valid claims. See Priore Declaration ¶ 8.

17. Section 501(a) of the Bankruptcy Code provides that “[a] creditor . . . may file a proof of claim.” 11 U.S.C. § 501(a). “The proof of claim, if filed in accordance with section 501 and the pertinent Bankruptcy Rules, constitutes prima facie evidence of the validity and amount of the claim under Federal Rule of Bankruptcy 3001(f) and Code section 502(a).” 4 COLLIER ON BANKRUPTCY ¶ 502.02[3][f] (Alan N. Resnick & Henry J. Sommer eds., 16th

ed. rev. 2013). Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that “such a claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law” 11 U.S.C. § 502(b)(1).

18. If an objection refuting at least one of the claim’s essential allegations is asserted, however, the claimant has the burden to demonstrate the validity of the claim. See In re Oneida Ltd., 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009); In re Adelphia Commc’ns Corp., Case No. 02-41729 (REG), 2007 Bankr. LEXIS 660, at *15 (Bankr. S.D.N.Y. Feb. 20, 2007); In re Rockefeller Ctr. Props., 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000).

19. The Debtors and the Borrower Trust diligently analyzed the No Liability Borrower Claims and the allegations set forth therein and examined the Debtors’ books and records in order to assess the alleged liabilities asserted. See Priore Declaration at ¶¶ 3-5. In addition, the Debtors sent Request Letters to those claimants who filed No Liability Borrower Claims with insufficient supporting documentation to allow such claimants to provide additional support for their claims. The holders of the No Liability Borrower Claims that received Request Letters either failed to respond to the letters or failed to provide sufficient information to substantiate their claims. See id. at ¶ 4.

20. The Borrower Trust’s specific factual and/or legal reason(s) for objecting to the allowance of each No Liability Borrower Claim is set forth on Exhibit A to the Proposed Order under the heading titled “*No Liability Summaries.*” In general, the Borrower Trust’s objection to each No Liability Borrower Claim falls under one or more of the following thirteen categories:

- (i) **General No Liability.** This category includes claims:
 - asserting that a Debtor is responsible for liabilities of non-Debtor entities;
 - related to statements made by non-Debtor entities that do not have the ability to impute liability to the Debtors for the benefit of Claimants in connection with the Chapter 11 Cases;

- asserting that a Debtor is liable based on litigation to which the Debtor is not a party; or
- that otherwise do not constitute a valid obligation of the Debtors (collectively, the “General No Liability Claims”).

To assess the validity of these claims, the Borrower Trust reviewed the Debtors’ books and records, including (a) the claimant’s transaction history showing the payments the claimant has made and the Debtors’ application of those payments to principal, interest, fees, and escrows, as applicable (the “Loan Payment History”), (b) the Debtors’ records tracking the history of the servicing of the claimant’s loan, including but not limited to documenting instances of i) communication with the claimant, ii) letters and notices sent by the Debtors to the claimant, and iii) the Debtors’ efforts to foreclose, conduct loss mitigation efforts, inspect properties, pay taxes and insurance on behalf of the claimant, and other standard servicing activity (collectively, the “Internal Servicing Notes”), and (c) other records as applicable. See Priore Declaration at ¶ 7(i). Based on its review, the Borrower Trust has determined that the Debtors are not liable for the General No Liability Claims. See id.

To substantiate this determination, the Borrower Trust is prepared to provide the Court and each claimant whose claim is identified as a General No Liability Claim on Exhibit A to the Proposed Order, upon their respective request, with copies of one or more³ of the following types of documents, each of which were prepared or kept by the Debtors in the course of their regularly conducted business activities:

- Loan Payment History;
- Internal Servicing Notes currently accessible to the Borrower Trust;
- Note and riders to the Note, if applicable;
- Mortgage/Deed of Trust; or
- Other documents that are relevant to the reconciliation of the claim.⁴

- (ii) **General Servicing Issues**. This category includes claims based on general servicing issues, including assertions that a Debtor misapplied mortgage payments, provided incorrect information or reporting to the claimant, made improper collection calls, failed to release a lien on a timely basis, failed to respond to Qualified Written Requests, wrongfully transferred servicing or wrongfully sold the claimant’s loan (the “General Servicing Issues Claims”). To assess the validity of these claims, the Borrower Trust reviewed Internal Servicing Notes, Loan Payment History, letters between the Debtors and the applicable Borrower(s), executed mortgage notes and deeds of trust, and other relevant documents. See Priore Declaration at ¶ 7(ii).

³ For the purpose of clarification, the Borrower Trust is not suggesting that the listed documents in the respective objection categories are relevant to every Claim; rather, the Borrower Trust will provide the claimant and the Court with copies of only those relevant documents presently in its possession that substantiate the stated reason(s) for disallowance.

⁴ The production of documents by the Borrower Trust (to claimants under any of the stated objection categories) will be subject to all applicable privileges, including without limitation, attorney-client, and where necessary, will be subject to a mutually acceptable Confidentiality Agreement.

Based on its review, the Borrower Trust has determined that the General Servicing Issues Claims are not valid obligations of the Debtors because: (a) the alleged events involving General Servicing Issues never took place; (b) the Debtor remedied the alleged error or mishandling, and as a result, the Claimant did not incur any damages or failed to provide evidence of damages; and/or (c) the Debtor acted properly in servicing the loan, in accordance with the Debtors standard policies and procedures and the terms of the executed note and deed of trust. See id.

To substantiate this determination, the Borrower Trust is prepared to provide the Court and each claimant whose claim is identified as a General Servicing Issues Claim on Exhibit A to the Proposed Order, upon their respective request, with copies of one or more of the following types of documents, each of which were prepared or kept by the Debtors' in the course of their regularly conducted business activities:

- Loan Payment History;
- Internal Servicing Notes currently accessible to the Borrower Trust;
- Note and riders to the Note, if applicable;
- Mortgage/Deed of Trust;
- Debtors' written communications to the claimant;
- Copies of lien releases; or
- Other documents that are relevant to the reconciliation of the claim.

(iii) **Origination Issues**. This category includes claims based on loan origination issues, which include, without limitation, claims relating to disputes regarding the loan application and closing process, disclosures, loan terms, rights of rescission or a purportedly defective title exam. To assess the validity of these claims (the "Origination Issues Claims"), the Borrower Trust reviewed the Debtors' books and records, including the claimants' executed mortgage notes, to determine whether any Debtor was involved in the origination of the applicable loans, and if so, if the claim would be barred by the applicable statute of limitations. See Priore Declaration at ¶ 7(iii).

Based on its review of the Debtors' books and records and its review of applicable state and federal law, the Borrower Trust determined that the Debtors are not liable for the Origination Issues Claims because either (1) no Debtor entity was involved in the origination of the applicable loans and vicarious liability cannot be imputed to any Debtor in its capacity as servicer or assignee of the loans,⁵ or (2) the claim is barred by the applicable statute of limitations See id.

To substantiate this determination, the Borrower Trust is prepared to provide the Court and each claimant whose claim is identified as an Origination Issues Claim on Exhibit A

⁵ As noted in Exhibit A, to the extent the claimant asserts statutory claims related to origination of the loan, the Borrower Trust reviewed the applicable federal and state statutes and determined that such claims against servicers or loan assignees carry no successor liability. To the extent claimant asserts common-law claims, the Borrower Trust found no case precedent establishing assignee liability when a party is not involved with the origination of the loan, and the claimant did not provide any specific legal authority to substantiate its allegation.

to the Proposed Order, upon their respective request, with copies of one or more of the following types of documents, each of which were prepared or kept by the Debtors in the course of their regularly conducted business activities:

- Internal Servicing Notes currently accessible to the Borrower Trust;
- Note and riders to the Note, if applicable;
- Mortgage/Deed of Trust;
- Origination File; or
- Other documents that are relevant to the reconciliation of the claim.

(iv) **Wrongful Foreclosure**. This category includes claims based, either directly or indirectly, on allegations of wrongful foreclosure by the Debtors (the “Wrongful Foreclosure Claims”). To assess the validity of these claims, the Borrower Trust examined the Debtors’ books and records to verify that the Debtors foreclosed properly and, where applicable, took the appropriate loss mitigation steps. Specifically, the Borrower Trust reviewed Payment History, Internal Servicing Notes, as well as, where applicable, the claimants’ loan modification applications, loan modification approval letters, loan modification denial letters, compliance with loan modifications (trial and/or permanent), compliance with any other payment plans (forbearance and repayment), short sale applications and history, investor guidelines and/or direction, breach letters, and/or foreclosure related documents. Where a claimant asserted that he or she did not execute the mortgage note, the Borrower Trust compared the signatures on other executed documents in the claimant’s file, as well as examining the Loan Payment History and any other information in the Debtors’ possession. Moreover, where a Wrongful Foreclosure Claim was based on issues related to a short sale, the Borrower Trust further reviewed the Debtors’ records to determine whether a short sale approval had been requested, and, if so and if such request was denied, whether the reason for denial was proper.⁶ See Priore Declaration at ¶ 7(iv). Based on its review, the Borrower Trust determined that the Debtors are not liable for the Wrongful Foreclosure Claims. See id.

To substantiate this determination, the Borrower Trust is prepared to provide the Court and each claimant whose claim is identified as a Wrongful Foreclosure Claim on Exhibit A to the Proposed Order, upon their respective request, with copies of one or more of the following types of documents, each of which were prepared or kept by the Debtors in the course of their regularly conducted business activities:

- Loan Payment History;
- Internal Servicing Notes currently accessible to the Trust;
- Note and riders to the Note, if applicable;
- Mortgage/Deed of Trust;
- Loan Modification Agreement, if applicable;
- Debtors’ written communications to Claimant, including the following, if applicable:
 - Denial Letters,

⁶ Appropriate reasons for denying a short sale request include, without limitation, a claimant’s failure to submit executed sale contracts, a claimant’s failure to obtain approval from second lien holders and/or a claimant’s short sale request did not comply with the investor’s requirements.

- Missing Items Letters,
- Loan Modification Offers,
- Signed Modification Agreement(s),
- Breach of Contract Notice, and
- Trial, Forbearance, or Foreclosure Repayment Plan Letters;
- Escrow Statement, if applicable;
- Pooling and Servicing Agreements, if applicable; or
- Other documents that are relevant to the reconciliation of the claim.

- (v) **Standing Issues**. This category includes claims alleging that the Debtors lacked the standing to service, foreclose or otherwise enforce the terms of the claimant's loan (the "Standing Issues Claims"). To assess the validity of these claims, the Borrower Trust reviewed the Debtors' books and records, including the claimant's mortgage or deed of trust, documents relating to chain of ownership, relevant assignments of interests in the loan, Loan Payment History, and Internal Servicing Notes. See Priore Declaration at ¶ 7(v). Based on its review, the Borrower Trust has determined that the Debtors are not liable for the Standing Issues Claims because the Debtors had proper authority to service or foreclose the loan and to enforce the terms of the claimant's loan on behalf of the owner of the loan. See id.

To substantiate this determination, the Borrower Trust is prepared to provide the Court and each claimant whose claim is identified as a Standing Issues Claim on Exhibit A to the Proposed Order, upon their respective request, with copies of one or more of the following types of documents, each of which were prepared or kept by the Debtors in the course of their regularly conducted business activities:

- Loan Payment History;
- Internal Servicing Notes currently accessible to the Borrower Trust;
- Note and riders to the Note, if applicable;
- Mortgage/Deed of Trust;
- Mortgage Assignments;
- Loan Modification Agreement, if applicable;
- Debtors' written communications to Claimant, if applicable; or
- Other documents that are relevant to the reconciliation of the claim.

- (vi) **Interest Rates and Fees Collected**. This category includes claims based on assertions that either (a) interest rates charged to the claimant were incorrect, incorrectly adjusted, or incorrectly not adjusted (the "Interest Rates Claims") or (b) the fees charged to the claimant were incorrect or inappropriate (the "Fees Collected Claims," and together with the Interest Rates Claims, the "Interest Rates and Fees Collected Claims"). To assess the validity of these claims, the Borrower Trust reviewed the Debtors' books and records, including the claimant's note, any adjustable rate rider and related documents, notices and/or adjustment letters sent to the claimant, Loan Payment History and fees charged. See Priore Declaration at ¶ 7 (vi).

Based on its review, the Borrower Trust has determined that the Debtors are not liable for the Interest Rates and Fees Collected Claims because the interest rates and fees charged were consistent with the governing loan documents, the Debtors' servicing policies, and

if applicable, investor guidelines and/or servicing agreements. To substantiate this determination, the Borrower Trust is prepared to provide the Court and each claimant whose claim is identified as an Interest Rates Claim or a Fees Collected Claim on Exhibit A to the Proposed Order, upon their respective request, with copies of one or more of the following types of documents, each of which were prepared or kept by the Debtors in the course of their regularly conducted business activities:

- Loan Payment History;
- Internal Servicing Notes currently accessible to the Borrower Trust;
- Note and riders to the Note, if applicable;
- Mortgage/Deed of Trust;
- Loan Modification Agreement, if applicable;
- Investor guidelines, if applicable;
- Servicing agreement(s), if applicable;
- Debtors' written communications to the claimant, including, if applicable Rate Adjustment Letters; or
- Other documents that are relevant to the reconciliation of the claim.

(vii) **Judicial Estoppel and Standing**. This category includes claims (the “Judicial Estoppel Claims”) that are barred from relief under the doctrine of judicial estoppel. Judicial estoppel applies when (i) a party asserts a position in a proceeding, but thereafter assumes a contrary position, and (ii) such inconsistencies create the inference the court has been misled. New Hampshire v. Maine, 532 U.S. 742, 749 (2001). Pursuant to 11 U.S.C. § 521(1), a debtor is required to disclose all of his/her actual or potential assets, which would include any known causes of action. See 11 U.S.C. §§ 521(1), 1306; Chartschlaa v. Nationwide Mut. Ins. Co., 538 F.3d 116 (2d Cir. 2008) (citing 11 U.S.C. §§ 521(a)(1)(B)(i), (iii)); Rosenshein v. Kleban, 918 F. Supp. 98 (S.D.N.Y. 1996). “If the debtor has enough information ... prior to confirmation to suggest that it may have a possible cause of action, then it is a ‘known’ cause of action such that it must be disclosed.” Browning Mfg. v. Mims (In re Coastal Plains, Inc.), 179 F.3d 197, 208 (5th Cir. 1999) (citations omitted). Undisclosed assets automatically remain property of the estate, and as a result, even after discharge of the bankruptcy estate, the debtor lacks standing to pursue a claim that he failed to disclose. See Rosenshein, 918 F. Supp. at 103.

This Court, following numerous other courts in this circuit, has applied the doctrine of judicial estoppel to disallow and expunge claims where the claimant failed to disclose the claim in their own bankruptcy proceeding. See Memorandum Opinion and Order Sustaining Objection and Expunging Claim No. 4443 by Corla Jackson [Docket No. 6363], *appeal dismissed*, No. 14 cv. 1427 (S.D.N.Y. Oct. 9, 2014). Similarly, each of the Claimants asserting a Judicial Estoppel Claim failed to affirmatively assert the Judicial Estoppel Claim in his or her respective bankruptcy cases (all of which have been closed). As a result, each Claimant effectively waived the right to assert his or her Judicial Estoppel Claim and is estopped from bringing those same claims in the Debtors' Chapter 11 cases. See Priore Declaration at ¶ 7(vii). Additionally, even if the Judicial Estoppel Claims were not barred by judicial estoppel, none of the Claimant's that filed Judicial Estoppel Claims have standing to pursue them because the Judicial Estoppel Claims are

property of each Claimant's bankruptcy estate. As a result, the Judicial Estoppel Claims are also barred for lack of standing.

With respect to the Judicial Estoppel Claims, the Borrower Trust examined the proofs of claims in conjunction with public bankruptcy records and validated that:

- (a) Claimant filed for individual bankruptcy protection and received a discharge,
- (b) the basis for claim comprising each of the Judicial Estoppel Claims involves assertions and alleged damages that occurred prior to Claimant's respective individual bankruptcy filing(s),
- (c) Claimant did not include the Judicial Estoppel Claims in the schedule of assets filed by Claimant in their bankruptcy case(s), and
- (d) Claimant never raised such claims in any other proceeding during their individual bankruptcy case (e.g., an adversary proceeding). See id.

(viii) **Res Judicata**. This category includes claims related to litigation that has already been adjudicated (the "**Res Judicata Claims**"). The Borrower Trust diligently reviewed the case notes from the Debtors' internal electronic case management system and the Debtors' internal files, relating to the litigation, including relevant underlying documents such as the note, loan agreement and/or deed of trust (the "**Litigation File**"). In each case, the Debtors or the Liquidating Trust (on behalf of the Borrower Trust) as applicable, supplemented the Litigation File by reaching out to the outside counsel who previously handled the litigation for the Debtors to obtain a current update as to the status of the litigation, as well as copies of any relevant case dockets, complaints, answers, counterclaims, motions, responsive pleadings, judgments, orders, and any other relevant documents relating to the underlying litigation. The allegations set forth in each Res Judicata Claim were compared to the information contained in the Litigation Files (as supplemented with information provided by outside counsel), as well as the Debtors' Books and Records. See Priore Declaration at ¶ 7(viii).

The Doctrine of res judicata provides that "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Burgos v. Hopkins, 14 F.3d 787, 789 (2d. Cir. 1994) (quoting Allen v. McCurry, 449 U.S. 90, 94 (1980)). See also Bremer v. Weeks, 85 P.3d 150, 160 (Haw. 2004) (stating the rule in Hawaii); Travelers Ins. Co. v. Joachim, 315 S.W. 3d 860, 863 (Tex. 2010) (stating the rule in Texas). Moreover, when a judgment is issued by a state court, the preclusive effect of such determination "in a subsequent federal action is determined by the rules of the state where the prior action occurred" New York v. Sokol (In re Sokol), 113 F.3d 303, 306 (2d Cir. 1997) (citing 28 U.S.C. § 1738); see, e.g., Taylor v. Sturgell, 553 U.S. 880 (2008). Therefore, "[i]n applying the doctrine of res judicata, [a court] must keep in mind that a state court judgment has the same preclusive effect in federal court as the judgment would have had in state court." Burka v. N.Y.C. Transit Auth., 32 F.3d 654, 657 (2d. Cir. 1994) (citation omitted); see, e.g., Kremer v. Chem. Constr. Corp., 456 U.S. 461 (1982).

The Res Judicata Claims are comprised of claims related to litigation that has already been adjudicated between the Claimant and the Debtors by a state or federal court. In each case, the Court either dismissed the claimant's complaint with prejudice, granted

foreclosure over the defenses presented by the Claimant, or affirmed the Debtors' rights that are contested by the Claimant. Copies of the relevant decisions are attached hereto as Exhibit 5 and Exhibits 6-1 through 6-5. The basis for each Res Judicata Claim is the same as the allegations made in the underlying litigation that were previously adjudicated on the merits by state or federal courts.

- (ix) **Loan Modification**. This category includes claims based on loan modification issues (the "Loan Modification Claims"), which allege, among other things, that the Debtors (a) failed to provide a loan modification,⁷ or (b) provided a loan modification, but the claimant believes the terms of the modification were not as favorable to the claimant as those to which claimant believed he or she was entitled. To assess the validity of these claims, the Borrower Trust examined the Debtors' books and records to verify that the Debtors followed the applicable investor guidelines and policies regarding loan modifications. Specifically, the Borrower Trust reviewed Internal Servicing Notes, Loan Payment History, and, where applicable, loan modification agreements, loan modification applications, loan modification denial letters, loan modification approval letters, the claimant's compliance with modifications (trial and/or permanent) and any instructions or guidelines provided by the investor for the claimant's loan. See Priore Declaration at ¶ 7(ix).

Based on its review, the Borrower Trust determined that the Debtors are not liable for the Loan Modification Claims because: (a) in cases where a loan modification request was denied, the Debtors complied with the applicable investor guidelines and policies governing the loan modification process and (b) in the cases where the claimant obtained a loan modification, the claimant was not damaged by the loan modification assistance provided. See id.

To substantiate this determination, the Borrower Trust is prepared to provide the Court and each claimant whose claim is identified as a Loan Modification Claim on Exhibit A to the Proposed Order, upon their respective request, with copies of one or more of the following types of documents, each of which were prepared or kept by the Debtors in the course of their regularly conducted business activities:

- Loan Payment History;
- Internal Servicing Notes currently accessible to the Borrower Trust;
- Note and riders to the Note, if applicable;
- Mortgage/Deed of Trust;
- Loan Modification Agreement, if applicable;
- Investor guidelines, if applicable;
- Servicing agreement(s), if applicable;
- Workout Packages;

⁷ As a regular part of the Debtors' business practices, the Debtors offered mortgage loan modifications to Borrowers in financial distress, pursuant to certain guidelines established by the investors ("Traditional Modifications"). The Home Affordable Modification Program ("HAMP") is an administrative program that was implemented in April 2009 by the United States Treasury Department to help eligible homeowners with loan modifications on their home mortgage debt. HAMP provided the Debtors with an additional type of loan modification (a "HAMP Modification") for assisting eligible Borrowers experiencing financial distress.

- Debtors' written communications to Claimant, including the following, if applicable:
 - Denial Letters,
 - Missing Items Letters,
 - Loan Modification Offers,
 - Signed Mod Agreement(s),
 - Breach of Contract Notice(s), and
 - Trial, Forbearance, or Foreclosure Repayment Plan Letters;
- Escrow Statement; or
- Other documents that are relevant to the reconciliation of the claim.

21. To prevent the claimants that filed the No Liability Borrower Claims from receiving improper recoveries to the detriment of other Borrowers holding valid claims, the Borrower Trust requests that the Court disallow and expunge in their entirety each of the No Liability Borrower Claims.

NOTICE

22. The Borrower Trust has served notice of this Objection in accordance with the Case Management Procedures entered on May 23, 2012 [Docket No. 141] and the Procedures Order. The Borrower Trust submits that no other or further notice need be provided.

NO PRIOR REQUEST

23. No previous request for the relief sought herein as against the holders of the No Liability Borrower Claims has been made by the Borrower Trust to this or any other court.

CONCLUSION

WHEREFORE, the Borrower Trust respectfully requests that the Court enter an order substantially in the form of the Proposed Order granting the relief requested herein and granting such other relief as is just and proper.

(Signature Page to Follow)

Dated: November 10, 2014
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum

Jordan A. Wishnew

Jessica J. Arett

MORRISON & FOERSTER LLP

250 West 55th Street

New York, New York 10019

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

*Counsel for The ResCap Borrower
Claims Trust*

Hearing Date and Time: January 14, 2015 at 10:00 a.m. (Prevailing Eastern Time)
Response Date and Time: December 10, 2014 at 4:00 p.m. (Prevailing Eastern Time)

MORRISON & FOERSTER LLP

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Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett

*Counsel for The ResCap Borrower Claims
Trust*

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

-----)	
In re:	)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
-----)	

**NOTICE OF THE RESCAP BORROWER CLAIMS TRUST'S
SEVENTY-SIXTH OMNIBUS OBJECTION TO CLAIMS
(NO LIABILITY BORROWER CLAIMS)**

PLEASE TAKE NOTICE that the undersigned have filed the attached *ResCap Borrower Claims Trust's Seventy-Sixth Omnibus Objection to Claims (No Liability Borrower Claims)* (the "Omnibus Objection"), which seeks to alter your rights by disallowing your claim against the above-captioned Debtors.

PLEASE TAKE FURTHER NOTICE that a hearing on the Omnibus Objection will take place on **January 14, 2015 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Omnibus Objection must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **December 10, 2014 at 4:00 p.m. (Prevailing Eastern Time)**, upon: (a) Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408; (b) counsel to the ResCap Borrower Claims Trust, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attention: Norman S. Rosenbaum, Jordan A. Wishnew, and Jessica J. Arett); (c) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014 (Attention: Linda A. Riffkin and Brian S. Masumoto); (d) The ResCap Borrower Claims Trust, Polsinelli PC, 900 Third Avenue, 21st Floor, New York, NY 10022, (Attn: Daniel J. Flanigan) and (e) The ResCap Liquidating Trust, Quest Turnaround Advisors, 800 Westchester Avenue, Suite S-520, Rye Brook, NY 10573 (Attention: Jeffrey Brodsky).

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written response to the relief requested in the Omnibus Objection, the Bankruptcy Court may deem any opposition waived, treat the Omnibus Objection as conceded, and enter an order granting the relief requested in the Omnibus Objection without further notice or hearing.

Dated: November 10, 2014
New York, New York

Respectfully Submitted,

/s/ Norman S. Rosenbaum
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

*Counsel for The ResCap Borrower
Claims Trust*

Exhibit 1

Proposed Order

Trust's Seventy-Sixth Omnibus Objection to Claims (No Liability Borrower Claims) annexed thereto as Exhibit 2, and the *Declaration of Norman S. Rosenbaum in Support of the ResCap Borrower Claims Trust's Seventy-Sixth Omnibus Objection to Claims (No Liability Borrower Claims)*, annexed thereto as Exhibit 3; and the Court having found and determined that the relief sought in the Objection is in the best interests of the Trust, the Trust's constituents, the Debtors, and other parties in interest and that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and the Court having determined that the Objection complies with the Borrower Claim Procedures set forth in the Procedures Order; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Objection is granted to the extent provided herein; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the claims listed on Exhibit A annexed hereto (collectively, the "No Liability Borrower Claims") are disallowed and expunged with prejudice; and it is further

ORDERED that Kurtzman Carson Consultants LLC, the Debtors' claims and noticing agent, is directed to disallow and expunge the No Liability Borrower Claims identified on the schedule attached as Exhibit A hereto so that such claims are no longer maintained on the Claims Register; and it is further

ORDERED that the Trust is authorized and empowered to take all actions as may be necessary and appropriate to implement the terms of this Order; and it is further

ORDERED that notice of the Objection, as provided therein, shall be deemed good and sufficient notice of such objection, and the requirements of Bankruptcy Rule 3007(a),

the Case Management Procedures entered on May 23, 2012 [Docket No. 141], the Procedures Order, and the Local Bankruptcy Rules of this Court are satisfied by such notice; and it is further

ORDERED that this Order has no res judicata, estoppel, or other effect on the validity, allowance, or disallowance of any claim not listed on Exhibit A annexed to this Order, and the Trust's and any party in interest's right to object on any basis are expressly reserved with respect to any such claim not listed on Exhibit A annexed hereto; and it is further

ORDERED that this Order shall be a final order with respect to each of the No Liability Borrower Claims identified on Exhibit A annexed hereto, as if each such No Liability Borrower Claim had been individually objected to; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____, 2015
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
4106	Lucas and Lisa Griego \$659,554 GMAC Mortgage, LLC 1929 7 th Street Las Vegas, NV 87701	Loan Modification Issues	<p>Debtor Homecomings Financial, LLC originated the loan on July 12, 2006. Debtor Residential Funding Company, LLC purchased the loan from Homecomings and transferred its interest when the loan was securitized on or about December 1, 2006 where Deutsche Bank Trust Company Americas was appointed as Trustee. Debtor Homecomings Financial serviced the loan from July 12, 2006 until servicing transferred to GMAC Mortgage, LLC on or about July 1, 2009. GMAC Mortgage LLC serviced the loan until servicing transferred to Ocwen Loan Servicing, LLC on February 16, 2013.</p> <p>Debtors have no liability for allegations of wrongful denial of loan modification and general mishandling of the loss mitigation process because in every instance that Claimants applied for modification, Claimants either failed to provide the required information to be considered for modification or Claimants did not meet the criteria required for modification.</p> <p>Claimants assert that they first applied for a loan modification in April 23, 2009. Debtors found no record of Claimants submitting an application on or about this time. Claimants assert that Debtors advised Claimants to miss their October 2009 payment in order to be considered for modification. Debtors have no liability for this assertion because there is no record that Debtors ever told Claimants to miss a payment. In the instances where Claimants applied for modification and were denied on the basis of the property being non-owner occupied, Debtors have no liability because Claimants failed to show that the property was owner-occupied, and applicable guidelines require that the property be owner-occupied. In the instances where Debtor denied modification on the basis of insufficient income, Debtors have no liability because Debtors' denials were in accordance</p>	12-14

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>with applicable guidelines, as discussed herein.</p> <p>Below is a timeline of the loss mitigation and foreclosure related events involved with Claimants' account:</p> <p>Debtors spoke with Claimants via phone on October 5, 2009. Debtors advised Claimants of the modification options available to help with delinquency on their loan. Claimants were advised that they could obtain a workout package application from the Debtors' website. Debtors mailed a workout package to Claimants on October 20, 2009. Claimants advised Debtors to mail the workout package to 726 Grand Ave, Las Vegas, NM 87701, which was not the property address related to Claimants' loan. Debtors received a workout package on November 3, 2009. A forbearance plan was setup on the account and a letter with forbearance plan details was mailed to Claimants. Claimants spoke with Debtors via phone on December 15, 2009. Debtors advised Claimants that the forbearance plan payment due December 13, 2009 had not been received. Claimants advised Debtors that the payment was mailed on December 10, 2009. Debtors denied HAMP Modification on December 17, 2009 due to the property being non-owner occupied. Debtors continued review for traditional modification options.</p> <p>Claimants spoke with Debtors via phone on December 18, 2009. Debtors advised Claimants of HAMP modification denial due to property being non-owner occupied. Claimants stated the property is owner occupied and not a rental property. In conjunction with review for traditional modification options, Debtors mailed missing items letter to Claimant on December 21, 2009 requesting a lease agreement for the rental property Claimants listed on their financial package. Debtors received additional financial</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>information from Claimants on January 11, 2010. Debtors re-reviewed for a HAMP modification due to receipt of the new financial information and denied a HAMP Modification on January 12, 2010 due to the property being non-owner occupied. Debtors continued to review for traditional loan modification options.</p> <p>Claimants spoke with Debtors via phone on January 13, 2010. Debtors advised Claimants of the denial due to the property being non-owner occupied. Claimants advised Debtors again that they live in the property and do not agree with the denial. Debtors reviewed a profit and loss statement submitted by Claimants on January 14, 2010. Debtors determined that self-employment income reflects that the Claimant had no excess income (the Claimant had more expenses than income) and therefore a traditional modification cannot be completed due to insufficient income. Claimants spoke with Debtors on January 19, 2010 via phone. Debtors advised Claimants that a modification was not able to be completed as self-employment income reflects a negative surplus. Claimants spoke with Debtors via phone on January 21, 2010. Debtors advised of traditional modification denial due to negative surplus and denied for HAMP due to the property being non-owner occupied. Although Debtor denied Claimants HAMP modification only on the basis of non-owner occupancy, it is noteworthy that Claimants were also ineligible for HAMP for the same reason Claimants were ineligible for a traditional modification: because Claimants had a negative surplus. On January 22, 2010, Claimants spoke with Debtors via phone and Debtors advised that proof of occupancy has not been received. Claimants spoke with Debtors via phone on February 22, 2010. Debtors advised Claimants that the HAMP modification was denied due to the property being non-owner occupied.</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Debtors received a new workout package from Claimants on March 10, 2010. On March 18, 2010 Debtors mailed a letter to Claimants requesting missing items. Debtors referred the account to foreclosure on March 23, 2010. Debtors received additional information for workout package on March 26, 2010. On April 8 and May 11, 2010, Debtors spoke with Claimants over the phone and advised Claimants of the missing information needed to complete the workout package. Debtors received additional information for a workout package on May 13, 2010. Debtors mailed a missing items letters to Claimants on June 1 and July 6, 2010. Debtors advised Claimants over the phone on July 13, 2010 of the missing documents needed for a modification review. Debtors closed out the loan modification review on July 23, 2010 due to Claimants not sending in the missing documents.</p> <p>Claimants spoke with Debtors via phone on September 24, 2010. Debtors advised that the modification request has closed out due to the Debtors not receiving the missing documents and that Claimants will need to submit a new package if they would like a modification review. Debtors mailed a workout package to Claimants on September 27, 2010. Claimants spoke with Debtors via phone on October 13, 2010. Claimants advised that the workout package was not received. Debtors advised Claimants that the workout package was mailed September 27, 2010 and informed Claimants how to access the workout package online. Claimants spoke with Debtors via phone on October 19, 2010. Debtors advised that they need a new workout package in order to consider Claimants for a modification. Claimants stated again that they has not received a new one to fill out. Debtors advised that they will have new one mailed. Debtors mailed a workout package via overnight mail on October 20, 2010; tracking number 794032106650. Claimants spoke</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>with Debtors via phone on November 3, 2010. Claimants advised that they need a new workout package. Debtors mailed a workout package to Claimants on November 4, 2010.</p> <p>A HOPE letter was mailed to Claimants on November 8, 2010. Ben Candler from HOPE attempted to contact Claimants to set up a phone meeting to discuss the available workout options. Claimants spoke with Debtors via phone on November 16, 2010. Claimants stated that they received a workout package and are waiting for Ben from HOPE to call them back and discuss. Claimants met with Ben Candler from HOPE on November 18, 2010. Claimants informed the HOPE rep that Claimant lives in the property but their mailing address is different. Claimants did not have all the paperwork available at the time of the meeting but Claimants said they will complete the paperwork and send to Debtors for review.</p> <p>Debtors received a new workout package for review on December 1, 2010. Debtors mailed a missing items letter to Claimants on December 6, 2010 as documents were needed to complete the workout package. Debtors received some additional documents needed for modification review on December 14, 2010 and December 31, 2010. Debtors mailed Claimants a missing items letter on January 7, 2011 as there were still documents needed to complete workout package. Debtors closed out the loan modification review on January 25, 2011 due to Claimants not sending in the necessary documents. Debtors attempted to contact Claimants regarding the denial on January 24, February 7, February 14, and February 21, 2011 with no answer. Messages were left for Claimants to call back. Claimants spoke with Debtors via phone on April 1, 2011. Debtors advised Claimants that the prior modification review closed due to not receiving the required missing documents.</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Claimants spoke with Debtors via phone on May 5, 2011. Claimants spoke with Debtors via phone on May 27, 2011. Debtors referred Claimant to website to obtain workout package. Claimants spoke with Debtors via phone on July 25, 2011. Debtors advised Claimants that they need a workout package for modification review. Debtors mailed a new workout package to Claimants on July 26, 2011.</p> <p>On December 7, 2011 the foreclosure case was dismissed without prejudice due to Debtors' lack of prosecution. Debtors referred the account to foreclosure on February 22, 2012.</p> <p>Claimants spoke with Debtors via phone on June 5, 2012. Claimants stated they wanted to complete a short sale on the account. Debtors advised Claimants of the information and documents needed for short sale review. Claimants spoke with Debtors via phone on June 7, 2012. Claimant advised they are trying for short sale but are still interested in a modification. Debtors advised that Claimants need to complete a workout package for modification review. Debtors mailed a workout package to Claimant on June 8, 2012. Debtors attempted to contact Claimants on June 11, 15, 18, 20, 21, 27, 29, July 3, 5, 10, and 16, 2012 with no answer or returned call from Claimants. Claimants spoke with Debtors via phone on July 17, 2012 and Claimants stated that they were already actively speaking to someone with GMACM about options. However, Debtors showed no records of any such conversations. Between August 2012 and February 2013, Debtors continued to attempt to contact Claimants to discuss the account, however, Claimants did not answer or return these calls or allow the account to be discussed. The loan was transferred to Ocwen for servicing on February 16, 2013.</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
1083	<p>Maria M. & Elda Thompson</p> <p>\$658,336</p> <p>GMAC Mortgage, LLC</p> <p>137 Ellery Avenue Newark, NJ 07106-3501</p> <p>Maria M. Thompson & Elda M. Thompson 29 General Lane Willingboro, NJ 08046</p>	General Servicing Issues, Wrongful Foreclosure, Interest Rate and Fees Collected, Origination Issues	<p>The Loan originated with Ameriquest Mortgage Company on June 25, 2005. The loan was securitized where U.S. Bank National Association was named as Trustee for Citigroup Mortgage Loan Trust Inc. series 2005-9. GMAC Mortgage LLC serviced the loan from October 20, 2005 until servicing transferred to Ocwen Loan Servicing, LLC on February 16, 2013.</p> <p>Claimants assert as a basis for their claim in box 2 of the proof of claim form "Breach of Contract". Debtor mailed a letter requesting additional information and documentation in support of Claimants' claim on June 21, 2013. Claimants responded by letter on September 26, 2013 asserting i) Debtors lack standing with respect to Claimants' loan by virtue of an improper assignment and an "illegal" mortgage, which Claimants attached as exhibit F to the letter response, ii) GMACM sent borrower a copy of the wrong note, iii) Debtors violated NJ state law with respect to the origination of the loan and foreclosure steps taken with respect to the loan, iv) Debtors were charging an interest rate that was different than what is stated on the monthly mortgage statement, v) Debtors pursued "illegal" foreclosure despite the fact that the loan was paid-in-full on August 16, 2005, and vi) wrongful foreclosure.</p> <p>Claimants' allegation that the mortgage attached (as exhibit f) to the proof of claim is an "illegal" document due to the stamp showing on the document is not a valid basis for invalidating the mortgage and Claimants have not demonstrated how the stamp renders the document illegal. The stamp appears to be an "office-use" stamp related to the processing or handling of the mortgage in connection with a foreclosure filed in 2007.</p>	7-8, 8-9, 9-10, 10-11

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Claimants have not demonstrated how they were damaged or somehow relied to their detriment on a copy of the wrong note. Debtors' records show that on January 14, 2011 Debtors inadvertently sent Claimant a copy of a note that had no relation to Claimants or Claimants' property (the "Unrelated Note"). The note was sent in response to a letter received by the Debtors on January 7, 2011. The loan number associated with the Unrelated Note was different than Claimants' loan number.</p> <p>With respect to Claimants' assertions that Debtors violated NJ law, Claimants makes two allegations: (a) Debtor charged Claimant fees that were not permitted by the NJ Licensed Lender Act, N.J.S.A. 17:11C-1 et seq. (now, the Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq.) (the "LLA"); and (b) that Debtors violated a provision in the "Save New Jersey Homes Act of 2008," by failing to provide the borrower with a six-month period of forbearance before proceeding with foreclosure. With regard to the first of these allegations, the Claimants allege Debtor impermissibly charged her for third party fees that were shown on the HUD-1 as being paid to Lender rather than to the third party. Debtors have no liability for this assertion because Debtors were not involved in the origination of the loan in any way and the allegations do not carry assignee liability to Debtor as servicer. Additionally, the LLA does not provide consumers with a private right of action.</p> <p>With regard to the second allegation, Claimants assert that by virtue of their "high risk loan" Claimants were entitled to, but failed to receive, a six-month period of forbearance before Debtor proceeded with foreclosure. Debtors have no liability because i) the law has been inoperative since July 2, 2011 and therefore the Claimants could not assert a</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>cause of action under it in their proof of claim and ii) the foreclosure action at issue commenced in 2007, and the law at issue did not become effective until July 2009.</p> <p>Debtors are not liable for Claimants' allegation that Debtors were charging an incorrect interest rate because at all times Debtors correctly charged, collected and applied payments in accordance with the terms of the mortgage note and the ARM Adjustable rate letters sent to Claimants. Debtors confirmed that the ARM Adjustable rate letters mailed to Claimants on December 24, 2009, June 23, 2010, December 24, 2010, June 23, 2011, December 26, 2011, June 26, 2012, December 24, 2012 reflected the correct terms per the note.</p> <p>Debtors are not liable for Claimants' allegation that Debtors pursued "illegal" foreclosure despite the fact that the loan was paid-in-full on August 16, 2005. At no time did Debtors pursue foreclosure against Claimants on a loan that was paid in full. Claimants' loan with Chase Mortgage was paid off from the proceeds of the refinancing provided by AMC Mortgage and Debtors serviced the AMC loan, which was not paid in full.</p> <p>Debtors have no liability for Claimants' allegation that Debtors refused to accept payments sent by Claimants between August 2005 and September 2011 because i) Debtors' payment history records reflect that payments Debtors received during this time period were correctly applied to the account, and ii) Debtors did not service the loan for the entire period alleged. The loan was originated with AMC Mortgage on July 5, 2005 and servicing was transferred to Debtors for servicing on October 20, 2005. Debtors' servicing records show that the account fell behind on October 16, 2006 when Claimants sent a</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>payment by check with insufficient funds. The November 7, 2006 payment was also returned for insufficient funds. On January 16, 2007, a third payment was returned for insufficient funds. Debtors added a restriction to the account requiring certified funds payments because it is company policy to add such a restriction once three payments have been returned for insufficient funds. Claimants brought the account current March 9, 2007, however, Claimants did not make a payment in April or May 2007 causing the account to fall delinquent. Debtors' records verify that Debtors setup a repayment plan in August 2007 to bring the account current and Claimants completed payments due on this plan. Claimants kept the account current until the November 1, 2010 payment was missed.</p> <p>Debtors have no liability for wrongful foreclosure because in every instance Debtors acted in accordance with the terms of the note and mortgage and its standard business practices. In every instance in which Debtors conducted foreclosure steps, Claimants were significantly past due and had not made arrangements to bring the account current. Additionally, the Borrower Trust found no instances of Debtors acting inappropriately with respect to loss mitigation efforts. Debtors referred the account to foreclosure on July 10, 2007 because the account owed for March through July 2007 payments. In support of Debtors' objection to wrongful foreclosure claims, and any possible allegations involving wrongful handling of loss mitigation efforts, Debtors' records show the following chronology:</p> <p>Debtors began servicing Claimants' account on October 20, 2005. Debtors received a payment in amount of \$1227.78 from Claimants on October 16, November 7, and</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>December 12, 2006 and January 16, 2007; however, Debtors received notification from Claimants' bank that there were insufficient funds to complete the payment, so Debtors reversed the payments off the account.</p> <p>On March 9, 2007, Debtors returned a payment of \$1300 to Claimants because Claimants sent the payment via bill pay account and the account was restricted to certified funds due to Claimants having three nonsufficient fund payment returns on account. Debtors mailed Claimants a Breach letter on June 5, 2007. Debtors returned a payment to Claimants in the amount of \$1227.78 on June 21, 2007 because Claimants only submitted one of three payments due on account and this was not within Debtors' payment guidelines, as Debtors' payment guidelines at this time required a minimum of half the total amount due for payment to be accepted. Debtors received a payment in amount of \$1288.78 from Claimants on February 22, 2007; however Debtors received notification from Claimants' bank that there were insufficient funds to complete the payment, so Debtors' reversed the payment off the account on June 27, 2007. Debtors referred the account to Foreclosure on July 10, 2007 as the account was owed for March through July 2007 payments. Debtors received a payment from Claimant on July 16, 2007 in the amount of \$1227.78; however the payment was returned to Claimant due to it only being one of five payments due on the account and account was in active foreclosure which required Claimant to pay total amount due, including foreclosure fees, for payments to be accepted. Debtors received a payment from Claimant on August 15 and September 14, 2007 in the amount of \$1227.78, however payment was returned to Claimants because the account was in active foreclosure.</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Debtors received workout information from Claimants on September 21, 2007. Debtors determined Claimants qualified for a 12 month repayment plan with a \$4000 down payment and payment of \$2215 due on the 30th of each month starting in September 2007 and ending September 2008. Debtors received signed agreement from Claimants for the 12 month repayment plan on October 30, 2007. Claimants brought the account current through the repayment plan.</p> <p>On November 25, 2008, Debtors spoke with Maria Thompson, a borrower on the account, via phone. Maria wanted to know why the interest rate had increased from 5.75% to 6%. Debtors advised her that the loan is an adjustable rate mortgage. Maria stated she would like a fixed rate mortgage and the Debtors advised her of the Direct Lending Department to discuss options. During this call, Maria also stated that she had not received a monthly account statement. Debtors advised December payment due on account and verified the correct mailing address is on account. Debtors then advised her that a monthly account statement was mailed on November 4, 2008 and faxed a copy to Maria.</p> <p>Debtors received a workout package on January 5, 2010. On January 7, 2010, Debtors denied a HAMP modification due to the fact that there was no verifiable income. Debtors mailed a denial letter to Claimants. Debtors attempted to contact Claimants via phone on January 11, 2010 to advise them of the HAMP denial, however there was no answer. Debtors received a payment in the amount of \$1227.78 from Claimants on January 7, 2010; however, Debtors received notification from Claimant's bank that the payment was nonsufficient funds and payment was reversed off the account on January 20, 2010. Debtors spoke with Maria Thompson via phone on May 5, 2010. Maria asked why her</p>	

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			<p>credit bureaus show reported a late payment. Debtors advised her that they received the January payment 35 days after the due date. Maria wanted the credit report amended but Debtors advised it will not amend because it believes the information is accurate. Debtors advised Maria that if she insists the information reported is wrong she can dispute the credit report with the credit bureau. Debtors received a letter from Maria, borrower 1, disputing how payments posted on May 14, 2010. Debtors responded by providing Maria with the payment history, a copy of the 12 month repayment plan agreement from 2007 and advised the Claimants that credit reporting had to continue as account was still delinquent and there was no agreement to amend the credit report.</p> <p>Debtors received a workout package from Claimants on September 10, 2010. Debtors denied the loan for a HAMP modification on October 6, 2010 because the financial package they received included information showing that the property is non-owner occupied. A denial letter was mailed to Claimants on October 7, 2010.</p> <p>Debtors received information from Newark City Tax Department on September 24, 2010. Claimants were behind on paying the 3rd and 4th installments for their 2009 property taxes and the 1st and 2nd installments for 2010. Debtors paid the delinquent taxes and added an escrow to the account. The escrow account had been added as part of the loan modification process, as escrows were required on all new modifications that were set up. Debtors spoke with Maria Thompson via phone on October 2, 2010. Maria questioned Debtors why the escrow account was added to account. Debtors advised that the escrow account was added as part of the loan modification process. Debtors mailed Claimants a letter on October 12, 2010 informing Claimants that the escrow account has been</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>removed from the account because the previous loan modification had been denied. However, there was a shortage that needed to be paid from delinquent taxes and that was spread over a 12 month period for Claimants to pay back. Debtors mailed Claimants a copy of the mortgage deed on December 2, 2010 to show Claimants that escrow can be added to protect the property. Debtors spoke with Maria Thompson via phone on December 3, 2010. Maria disputed the escrow account being added to the account as taxes and insurance were already paid and stated that she feels the foreclosure completed on the account was illegal. Maria stated money is being held illegally and she received an escrow letter stating the escrow account would be waived. Debtors spoke with Maria Thompson again on December 6, 2010. Maria stated she does not have to pay the negative escrow balance on account. Debtors advised that the account will not be escrowed in the future but that she still needs to pay the shortage. Maria began disputing the foreclosure that was started in 2007. Debtors advised her that it will review the account. Debtors emailed Claimants on December 7, 2010. Debtors advised Claimants in an email that Debtors paid delinquent taxes on September 24, 2010 for taxes due for 3rd and 4th installments due in 2009 and 1st, 2nd, and 3rd installments due in 2010. Once the escrow balance is brought to zero the escrow account will be removed.</p> <p>Claimants spoke with Debtors via phone on December 11, 2010. Claimants asked for an update on the foreclosure dispute. Debtors advised that it needed more time for review. Claimants stated that they are also disputing the escrow on the account. Debtors advised that the escrow account is not illegal and that Claimants need to pay the negative escrow balance to close out the escrow account. Claimants spoke with Debtors via phone on December 30, 2010. Claimants were disputing escrow payments due on the account.</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Debtors advised the Claimants that the mortgage deed allows the escrow account to be added if necessary and advised it will mail Claimants a copy of the mortgage deed. Debtors mailed a copy of mortgage deed to Claimants on January 5, 2011. Debtors spoke with Maria Thompson via phone on January 25, 2011. Claimant stated that the payments made to Debtors September through November 2007 were not posted to the account but show that they cleared at the bank. Debtors advised her to send in the bank statements and it will validate with the Debtors' records.</p> <p>Debtors received a QWR request from Claimants on April 19, 2011. Debtors replied to the QWR on May 9, 2011. Debtors provided copies of the mortgage note, HUD, mortgage deed, payment history and advised of assignment information.</p> <p>Debtors referred the account to foreclosure on July 7, 2011 because the account owed April through July 2011 payments. Debtors return a payment of \$1227.78 received on July 11, 2011 as this was not enough to bring the account current. Claimants spoke with Debtors via phone on July 15, 2011 and asked why the payment was returned. Debtors advised that the account was in active foreclosure.</p> <p>Claimants spoke with Debtors via phone on July 16, 2011. Claimants stated that someone from Debtors came to the property to do an inspection and she considers this harassment. Debtors explained purpose of property inspections (to ensue property is occupied and being maintained). Debtors mailed a copy of the mortgage note per Claimants' request on July 19, 2011. Debtors returned a payment of \$1227.78 received on July 21, 2011 as this was not enough to bring the account current. Debtors received a letter from Claimants with copies of tax payments made and asking for a response to be</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>sent to an attorney. Debtors mailed the attorney prior responses to the Claimants as well as the state complaint response and explained that these issues have been addressed and will not continue to be addressed any further. Debtors advised that the tax receipts sent by Claimants reflect taxes paid in 2007 and 2008 but Debtors paid at last half of 2009 and the first 3 installments of 2010 taxes.</p> <p>Debtors returned payments of \$1227.78 received on August 5, August 11, August 17, September 6, September 12, September 15, September 21, September 23, September 27, September 28, October 3, October 6, October 10, October 13, October 17, 2011 as this was not enough to bring the account current.</p> <p>Claimants' authorized third party, Alex Ramos, spoke with Debtors via phone April 20, 2012. Alex asked if account is under review for loan modification, Debtors advised that it was not and that the account is in active foreclosure. Alex advised the Claimants would like to consider a modification for the account. Debtors advised they will need to complete a workout package for review. Debtors mailed workout package to Claimants on April 24, 2012 but a completed workout package was never received. Loan was transferred to Ocwen Loan Servicing on February 16, 2013.</p>	
4312	Deborah C. Maxwell \$542,500 GMAC Mortgage, LLC 22822 Fossil Peak	Origination issues	Debtor Homecomings Financial, LLC originated the loan on October 26, 2006. Debtor Residential Funding Company, LLC purchased the loan from Homecomings and transferred its interest when the loan was securitized on or about December 1, 2006 where Deutsche Bank Trust Company Americas was appointed as Trustee. Homecomings serviced the loan from origination until servicing transferred to GMAC Mortgage, LLC on July 1, 2009; GMAC Mortgage, LLC serviced the loan until servicing transferred to Ocwen Loan Servicing, LLC	8

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
	San Antonio, TX 78261		<p>on February 16, 2013.</p> <p>Claimant attaches to her proof of claim litigation filed against Debtors and others in the District Court, 224th Judicial District, Bexar County, TX, Case No. 2010-C1-14491, filed on August 27, 2010. The complaint lists one cause of action for rescission under the Truth in Lending Act. A Motion to Dismiss was granted to all parties dismissing the case without prejudice on August 21, 2014 because the Claimant failed to provide discovery and pay the required escrow payments to the court. The Claimant did not appeal.</p> <p>Debtors have no liability for Claimant's origination-based allegations for damages. Debtors' records show that Claimant signed, acknowledging receipt of the proper disclosures related to the loan closing, including: the final HUD statement (showing closing charges associated with the loan), the Notice of Right to Cancel, and additionally a waiver of her right to rescind.</p> <p>The Truth in Lending Act ("TILA"), 15 USC 1635(f) provides that certain borrowers may exercise their right to rescind for up to 3 years after consummation. 15 U.S.C 1640(e) permits an action for damages to be brought within 1 year of the date of occurrence of the violation. In this case, the loan originated in 2006 and the complaint wasn't filed until 2010, therefore any claim for damages is time-barred.</p> <p>In addition, Debtor GMAC Mortgage was only a servicer of the loan and therefore cannot be liable under TILA (15 U.S.C 1602(g)).</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			As stated above, Debtor Homecomings transferred its beneficial interest in the loan shortly after origination. Therefore, a claim for actual rescission of the loan would be belong to the current owner of the loan, Deutsche Bank, and not Debtor.	
4378	Deborah C. Maxwell \$542,500 Homecomings Financial, LLC 22822 Fossil Peak San Antonio, TX 78261	Origination issues	<p>Debtor Homecomings Financial, LLC originated the loan on October 26, 2006. Debtor Residential Funding Company, LLC purchased the loan from Homecomings and transferred its interest when the loan was securitized on or about December 1, 2006 where Deutsche Bank Trust Company Americas was appointed as Trustee. Homecomings serviced the loan from origination until servicing transferred to GMAC Mortgage, LLC on July 1, 2009. GMAC Mortgage, LLC serviced the loan until servicing transferred to Ocwen Loan Servicing, LLC on February 16, 2013.</p> <p>Claimant attaches to her proof of claim litigation filed against Debtors and others in the District Court, 224th Judicial District, Bexar County, TX, Case No. 2010-C1-14491, filed on August 27, 2010. The complaint lists one cause of action for rescission under the Truth in Lending Act. A Motion to Dismiss was granted to all parties dismissing the case without prejudice on August 21, 2014.</p> <p>Debtors have no liability for Claimant's origination-based allegations for damages. Debtors' records show that Claimant signed, acknowledging receipt of the proper disclosures related to the loan closing, including: the final HUD statement (showing closing charges associated with the loan), the Notice of Right to Cancel, and additionally a waiver of her right to rescind.</p>	8

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>The Truth in Lending Act ("TILA"), 15 USC 1635(f) provides that certain borrowers may exercise their right to rescind for up to 3 years after consummation. 15 U.S.C 1640(e) permits an action for damages to be brought within 1 year of the date of occurrence of the violation. In this case, the loan originated in 2006 and the complaint wasn't filed until 2010, therefore any claim for damages is time-barred.</p> <p>In addition, Debtor GMAC Mortgage was only a servicer of the loan and therefore cannot be liable under TILA (15 U.S.C 1602(g)).</p> <p>As stated above, Debtor Homecomings transferred its beneficial interest in the loan shortly after origination. Therefore, a claim for actual rescission of the loan would be belong to the current owner of the loan, Deutsche Bank, and not Debtor.</p>	
2055	<p>MICHAEL KARMAZYN AND KRISTIN</p> <p>\$389,000</p> <p>GMAC Mortgage, LLC</p> <p>Karmazyn and Co. Inc. 5262 S. Malta Way Centennial, CO 80015-6013</p>	<p>General No Liability, Wrongful Foreclosure, General Servicing Issues, Loan Modification Issues</p>	<p>Equifirst Corporation originated the loan on August 5, 2005. Debtor Residential Funding Company, LLC purchased the loan from Equifirst and transferred its interest when the loan was securitized on or about October 26, 2005 where US Bank, NA was appointed as Trustee. Debtor Homecomings Financial serviced the loan from October 1, 2005 until servicing transferred to GMAC Mortgage, LLC on or about July 1, 2009. GMAC Mortgage LLC serviced the loan until the October 7, 2009 foreclosure sale.</p> <p>Claimant asserts "Wrongful Foreclosure by GMAC, determined by Independent Foreclosure Review" as basis for claim in box 2 of the proof of claim form. Additionally, Claimant attached a letter to the proof of claim alleging i) a person informed Claimant on August 1, 2009 that they had bought the property at auction. When Claimant contacted</p>	6-7, 7-8, 8-9, 12-14

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Debtors, Debtors told Claimant that Claimant had not made a payment for "fees for the modified loan"; ii) Debtor misapplied or wrongfully "reversed" payments Claimant had made and never told Claimant why, iii) Debtor did not properly provide notice of the foreclosure sale because Debtor did not publish the foreclosure sale in the newspaper. On June 21, 2013, Debtors mailed to Claimant a letter requesting additional information and documentation in support of the claim. Claimant replied by letter on July 23, 2013 alleging a person informed Claimant on July 28, 2009 that he bought the property at auction, that Claimant contacted Debtors via phone on August 1, 2009 and was told by Debtors that "a terrible mistake was made and we were paid in full and we did not have to move", and on "August 4, 2009 sheriff kick us out."</p> <p>Debtors have no liability for any conclusions determined by the Independent Foreclosure Review because the Independent Foreclosure Review is a non-Debtor related program that does not have the authority or ability to impute liability to Debtors for the benefit of a Claimant in connection with the Debtors' chapter 11 case.</p> <p>Debtors found no evidence validating the events that allegedly occurred or the statements Debtors' allegedly made regarding Claimant's account on or about August 1, 2009. Claimant alleges they were evicted by a sheriff in connection with a foreclosure sale on August 4, 2009. Debtors have no records indicating that a foreclosure sale took place prior to August 4, 2009 or that Claimant was evicted on or about August 4, 2009. Debtors' records show a foreclosure sale occurred on October 7, 2009, two-months after the alleged eviction, and do not show that there was ever an eviction action against Claimant. Debtors have no records or evidence indicating Debtor told Claimant their account was</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>"paid in full" or that Debtors had made a "terrible mistake". Debtors also confirmed that Claimant's account was not paid in full and that Debtors had not made a mistake in the handling of Claimant's account during the period at issue.</p> <p>Debtors have no liability for allegations of wrongful foreclosure because in every instance in the foreclosure process Debtors acted in accordance with Debtors' standard policies and procedures, applicable foreclosure law, and the terms of the Claimant's note, mortgage, and loss mitigation-related agreements. Claimant was significantly past due on their account and had not satisfied requirements to bring Claimant's account current. Specifically, a foreclosure sale was completed because Claimant failed to make the entire payment due on a repayment plan entered into on September 24, 2009. At the time of the foreclosure sale, the account was owing for November 2008 through October 2009 payments.</p> <p>Debtors have no liability for allegations of misapplied payments because Debtors confirmed that Debtors handled all payments received from Claimant appropriately. Debtors confirmed that in every instance Claimant submitted an incorrect amount or used the wrong payment method, Debtors did not apply the funds and either returned the funds to Claimant or did not cash the underlying checks.</p> <p>In support of Debtors' abovementioned bases for objection, Debtors' records show the following chronology of events:</p> <p>Debtors approved the account for a traditional modification on January 15, 2009. The</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>modification required a contribution of \$1,979.14 in certified funds due on January 25, 2009. The modification reduced the interest rate from 9.10% to 4.85% and added \$12,407.30 (for the interest and escrow that had accrued since the Claimant's last payment) to the principal balance in order to bring the account current. Debtors mailed the traditional modification documents to Claimant on January 21, 2009. Debtors received modification documents from Claimant on January 30, 2009 with a personal check for \$2,000; however, Claimant did not send in the contribution amount via certified funds and funds were not able to be accepted. As a result, the modification was terminated. The Debtors never cashed this check. Debtors received a payment from Claimant via personal check in amount on \$4,000 on March 11, 2009. Debtors returned the payment to Claimant as the account required payments in certified funds. The Debtors mailed a letter to Claimant informing him of the payment being returned and why it was returned.</p> <p>Debtors approved the account for a traditional three month trial plan on March 20, 2009. The plan required a contribution payment of \$4,000 and a monthly contribution of \$2,035. Debtors received a signed traditional trial plan agreement from Claimant on March 26, 2009. Debtors received a payment from Claimant via personal check in the amount of \$2,000 on April 21, 2009. Debtors returned the payment to Claimant as the account required certified funds and mailed a letter to Claimant informing him of the payment being returned and why it was returned. Claimant spoke with Debtors via phone on May 4, 2009. Claimant wanted to know why the payment was returned. Debtors advised that the account requires payment to be made via certified funds. Claimant said that he will make a payment that day. Debtors cancelled the trial plan and denied modification review on May 14, 2009 due to Claimant not making a payment due on the</p>	

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			<p>trial plan.</p> <p>Debtors received a payment in the amount of \$2,000 on June 2, 2009 via Western Union Quick Collect #5614783653, however, the amount was less than the amount required to bring the account current so Debtors returned the \$2,000. Debtors received workout packages from Claimant on June 10, June 15, and July 29, 2009. Claimant spoke with Debtors via phone on July 29, 2009 and Debtors set up a 5-month foreclosure repayment plan with monthly payments of \$1,528.92. The plan was set up to allow Claimant time to submit the missing documents needed for modification review. Debtors cancelled the foreclosure repayment plan on September 15, 2009 due to Claimant not making the contribution payment. Debtors mailed a letter to Claimant on September 17, 2009 informing him of the repayment plan being cancelled. Funds were received and returned September 23, 2009, check #6365504983, in the amount of \$1,530.00 due to the plan no longer being active on the account when the funds came in and the funds not being enough to reinstate the account.</p> <p>A new foreclosure plan was sent to the claimant on September 24, 2009 and the claimant was informed on September 24, 2009 that a payment of \$1,530 was needed to be received by October 5, 2009 followed by three more payments of \$1,244.65 due on the 5th of November, December and January. The foreclosure repayment plan was cancelled October 7, 2009 due to not receiving the full payment due as the Claimant only sent in \$1,244.65, check #6365505039, which was returned to Claimant October 7, 2009. The property went to foreclosure sale October 7, 2009. At the time of the foreclosure sale, there was an unpaid principal balance of \$285,480.45 and the account was owing for</p>	

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			November 2008 through October 2009 payments.	
3819	Patti Ann Tetherow \$340,257 GMAC Mortgage, LLC 2020 NE 59 th Court Fort Lauderdale, FL 33308	General No Liability, Wrongful Foreclosure, General Servicing Issues, Loan Modification Issues	<p>Bergin Financial, Inc. originated the loan on September 14, 2006. Debtor Residential Funding Company, LLC purchased the loan from Bergin Financial and transferred its interest when the loan was securitized on or about November 1, 2006 where Deutsche Bank Trust Company Americas was appointed as Trustee. Debtor Homecomings Financial serviced the loan from September 29, 2006 until servicing transferred to GMAC Mortgage, LLC on or about July 1, 2009. GMAC Mortgage LLC serviced the loan until servicing transferred to Ocwen Loan Servicing, LLC on February 16, 2013.</p> <p>Claimant asserts "Mortgage Loan/Note" as the basis for her claim in box 2 of the proof of claim form. Claimant attached a timeline of events involving Claimant's account and efforts to obtain a loan modification, as well as other documents sent to and received from Debtors. On June 21, 2013 Debtors sent Claimant a letter requesting additional information in support of Claimant's claim. Claimant responded by letter on July 22, 2013, stating "My loan has been sold/transferred four times. I have applied for a loan modification numerous times (copies sent). During the transferring of my loan, this property has been subject to a Sheriff's Sale (4) times - copies included. This has affected my rental property/listed in the paper also comes up on the internet when address is searched. I have been given every excuse for denial of a modification, which I believe has been wrong."</p> <p>Debtors have no liability arising from Claimant's statement "My loan has been sold/transferred four times" because the statement is incorrect, and the transfers of</p>	6-7, 7-8, 8-9, 12-14

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			<p>servicing and loan ownership that did occur were proper and lawful. Furthermore, Claimant has failed to demonstrate how she was damaged by this assertion. Debtors' copy of the note shows proper endorsements from Bergin Financial, Inc. to Residential Funding Company, LLC, and then to Deutsche Bank Trust Company, as Trustee. Debtor Homecomings Financial serviced the loan on behalf of the respective investor from September 29, 2006 until July 2009 when all loans serviced by Homecomings transferred to GMAC Mortgage LLC. GMAC Mortgage LLC continued with servicing until servicing transferred to Ocwen Loan Servicing, LLC on February 16, 2013.</p> <p>Debtors have no liability for allegations of wrongful denial of a loan modification because Debtors did in fact modify Claimant's loan in late 2008; however, Claimant failed to make the required payments under the agreement. Thereafter, in every instance Claimant was denied for modification, Claimant either did not meet the applicable investor/traditional or HAMP guidelines for a modification, or Claimant failed to provide the requisite information in order to be considered for a modification.</p> <p>Debtors have no liability for wrongful foreclosure because in every instance Debtors acted in accordance with Debtors' standard policies and procedures and the terms of the Claimant's note, mortgage, and other related agreements, and Claimant was significantly past due on her account and had not made arrangements to bring Claimant's account current. At the time the servicing of Claimant's loan was transferred to Ocwen in 2013, the account was owing for November 1, 2008 payment.</p> <p>In support of Debtors' bases for objection with respect to wrongful denial of loan</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>modification and wrongful foreclosure claims, Debtors' records show the following chronology of events:</p> <p>Claimant spoke with Debtors via phone on August 17, 2007. Claimant requested a deferment of payment, Debtors informed Claimant a deferment is not an option on the loan. Claimant spoke with Debtors via phone again on October 18, 2007 and advised the Debtors she had a loss in income and would like to be considered for a modification. Debtors took verbal financial information from Claimant and determined Claimant had a more expenses than income so a modification was not possible under the investor guidelines. Debtors advised her of the option to list the property for a sale and also advised her that it will mail a workout package so Claimant can submit information if Claimant's situation changes. Debtors mailed Claimant an Options to Avoid Foreclosure letter to Claimant on November 14, 2007.</p> <p>Claimant spoke with Debtors via phone on November 19, 2007 and Claimant stated she did not receive a workout package that was mailed. Debtors advised her that it can fax a workout package to her but the line disconnected before a fax number could be received and Claimant did not answer when Debtors attempted to call her back. Debtors mailed a Breach letter to Claimant on December 4, 2007.</p> <p>Debtors mailed a Loss Mitigation Foreclosure Referral letter to Claimant on January 4, 2008. Debtors mailed a Breach letter to Claimant on January 4, 2008.</p> <p>Debtors received a workout package for traditional loan modification review on February</p>	

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			<p>1, 2008.</p> <p>Claimant spoke with Debtors via phone on February 7, 2008. Debtors reviewed the financial information received in workout package and advised Claimant that the financials received reflect claimant is over extended and that the Debtors cannot approve the account for a loan modification. Debtors advised Claimant that it she needs to consider selling property. Debtors referred account to foreclosure on February 18, 2008.</p> <p>Claimant spoke with Debtors via phone on June 12, 2008. Debtors advised her that it will refer the loan for traditional loan modification review. Debtors set up a traditional trial plan for Claimant for a \$1,000 payment on June 23, 2008 and payments of \$2300 due July 23, 2008. Debtors mailed repayment plan to Claimant. The Debtors received June and July payments under the trial plan from the Claimant and received the signed trial plan documents on July 8, 2008.</p> <p>Claimant spoke with Debtors via phone on July 24, 2008. Debtors advised Claimant that it received her payment July 22, 2008. Debtors advised Claimant that if a permanent modification is not approved by August 23, 2008, then she should make another payment of \$2,300.</p> <p>Debtors approved the account for a traditional permanent modification on September 3, 2008 effective with the October 1, 2008 payment. Debtors mailed the traditional permanent modification documents to Claimant on September 16, 2008. Documents were due back to Debtors by September 24, 2008. Debtors received signed modification documents from Claimant on November 24, 2008. The foreclosure referral on the</p>	

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			<p>account was closed out on November 24, 2008 as the account had an executed loan modification.</p> <p>Debtors received notification of Claimant filing Chapter 7 bankruptcy on November 20, 2008. Bankruptcy was dismissed on March 17, 2009. Claimant did not reaffirm debt after bankruptcy was dismissed.</p> <p>Claimant spoke with Debtors via phone on January 8, 2009. Claimant wanted a modification to assist with lowering monthly mortgage payments. Debtors advised Claimant that it would need bankruptcy attorney information on file before a loan modification can be discussed. Debtors also advised Claimant that a motion for relief was filed and if it was approved collection activity would resume. Debtors obtained Claimant's bankruptcy attorney information after the phone call was completed.</p> <p>Debtors received notification of Claimant filing Chapter 13 bankruptcy on March 18, 2009. Debtors mailed Breach letter to Claimant on July 17, 2009 as the account owed for November 1, 2008 through July 1, 2009 payments. Claimant spoke with Debtors via phone on July 20, 2009. Claimant wanted to know if a repayment plan could be setup on the account. Debtors advised Claimant that they would need to get a judgment from the court stating Claimant is no longer in bankruptcy. Claimant spoke with Debtors via phone on July 22, 2009. Claimant wanted to know about loan modification. Debtors advised Claimant that they will be able to consider modification once bankruptcy has ended on the account.</p> <p>Debtors qualified the Claimants for a traditional permanent modification on July 28, 2009.</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>The loan was interest only with a lower interest rate. A contribution payment of \$2,013.47 was due on August 7, 2009. Debtors mailed permanent modification documents on August 3, 2009, but received notification from attorney on September 23, 2009 that the Claimant would not be executing the loan modification offered. The attorney notified the Debtors that the claimant was not paying the Trustee and the bankruptcy case will likely be dismissed. Claimant's Chapter 13 Bankruptcy was dismissed on September 24, 2009.</p> <p>Claimant spoke with Debtors via phone on October 7, 2009. Claimant stated she would like to keep the property. Debtors mailed a workout package to Claimant on October 30, 2009. On December 9, 2009, Debtors closed out the approved loan modification from July 28, 2009 as Claimant did not return the permanent loan modification documents. Debtors referred the account to foreclosure on December 14, 2009. The account owed for November 1, 2008 through December 1, 2009 payments.</p> <p>Debtors received a workout package from Claimant on January 28, 2010. Debtors mailed a 10-day missing items letter to Claimant on February 4, 2010 as the workout package received was not complete. Debtors received additional documents for the workout package on March 5, 2010.</p> <p>Debtors denied the loan for a HAMP Modification on March 19, 2010 because Claimant's workout package did not support a loan modification within HAMP program guidelines due to insufficient income. Debtors continued to review the account for a traditional modification. Debtors denied the loan for a traditional loan modification on March 23, 2010. This was because Debtors were unable to reach an affordable payment of \$1,045.00 based on Claimant's income of \$2750 and property value of \$271,792, even</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>when reducing the interest rate and unpaid principal balance within program guidelines. Debtors mailed a denial letter to Claimant. Claimant spoke with Debtors via phone on April 21, 2010. Claimant wanted to reapply for a loan modification because she said her income increased. Debtors received workout package from Claimant on June 4, 2010 and additional documents for loan modification review on June 14, 2010. Debtors mailed Claimant a 15 day missing items letter on July 19, 2010. Debtors received additional documents for the workout package on July 20, 2010; however, Debtors did not receive all of the items needed. Debtors closed out the loan modification review on August 5, 2010 as Claimant had not sent in all documents needed for the loan modification review. Claimant spoke with Debtors via phone on August 27, 2010 and Debtors advised Claimant that the loan was no longer under review for a loan modification as Debtors did not receive all of the documents needed for review. Debtors advised Claimant that she needs to mail in a new workout package.</p> <p>Debtors received workout package from Claimant on September 25, 2010. Debtors denied loan for HAMP Modification on November 17, 2010 because the workout package reflected a lack of income to support a loan modification. Debtors mailed a denial letter to Claimant. Debtors continued to review the account for a traditional modification but denied the loan for traditional loan modification on November 24, 2010. The denial occurred due to Claimant having insufficient income to support a loan modification. Debtors mailed a denial letter to Claimant.</p> <p>Claimant spoke with Debtors via phone on December 3, 2010. Debtors advised Claimant of the HAMP and traditional modification denials and advised Claimant to consider selling</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>the property. Claimant stated that she will be reapplying for a loan modification. Debtors mailed a new workout package to Claimant on December 6, 2010.</p> <p>Debtors received a new workout package from Claimant on March 1, 2011. Debtors denied the loan for a HAMP Modification on March 10, 2011 because the workout package received reflected a lack of income to support a loan modification. Debtors mailed a denial letter to Claimant. Debtors continued to review account for traditional modification but denied the loan for traditional loan modification on March 16, 2011. The denial occurred due to Claimant having insufficient income to support a loan modification. Debtors mailed a denial letter to Claimant.</p> <p>Debtors received new workout package from Claimant on November 15, 2011. Debtors mailed Claimant 30-day missing items letter on November 22, 2011. Debtors received additional documents for modification review on December 19, 2011 and February 14, 2012. However, the information received did not complete the workout package, as the profit and loss statement that was submitted was not completed correctly, and the loan modification review was closed on February 17, 2012 due to Debtors not receiving documents needed for modification review to continue.</p> <p>Claimant spoke with Debtors via phone on February 20, 2012. Debtors advised her of the modification denial due to the Profit and Loss statement not being completed correctly. Debtors mailed a new workout package to Claimant on February 21 and February 24, 2012 and received a new workout package from Claimant on March 5, 2012. Debtors mailed 30-day missing items letter to Claimant on March 14, 2012. Claimant spoke with</p>	

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			<p>Debtors via phone on March 21, 2012. Claimant advised the Debtors that the last missing items letter was blank, and Debtors advised it will mail missing a item letter with the necessary information on it. Debtors advised Claimant of the missing information needed on the account. Claimant advised Debtors that three tenants pay rent via check and one tenant pays rent in cash and all rental income is deposited at one time. Debtors received additional documents for workout package on March 28, 2012. Debtors denied loan for HAMP Modification on May 8, 2012 because workout package received reflected a lack of income to support a loan modification. Debtors continued to review the account for a traditional loan modification. Claimant spoke with Debtors via phone on May 9, 2012 and Debtors advised Claimant of the HAMP denial and that account still under review for possible traditional modification. Claimant spoke with Debtors via phone on May 14, 2012. Debtors advised her of the denial and reviewed the profit and loss statement with Claimant. Claimant stated the income on the statement was not correct because Claimant had included personal expenses. Debtors advised Claimant to submit a corrected profit and loss statement for modification review so the correct income would be used.</p> <p>Debtors denied account for traditional modification options due to a negative NPV (net present value) of \$25,933.15. Debtors mailed a denial letter to Claimant. Claimant spoke with Debtors via phone on May 29, 2012. Debtors advised Claimant of the modification denial. Claimant did not submit an updated profit and loss statement. Debtors advised the Claimant it will need a new workout package to be considered for a loan modification. Debtors received workout package from Claimant on May 30, 2012.</p> <p>Claimant spoke with Debtors via phone on June 4, 2012. Claimant called in for update on</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>the modification review. Debtors advised that it received a 4 page fax from Claimant on May 29, 2012, but the package was not complete and a workout package was mailed to Claimant so all documents needed could be completed and sent. Until all documents were received, the loan could not be reviewed for a loan modification.</p> <p>Claimant spoke with Debtors via phone on June 11, 2012. Debtors reviewed income on file and verified that Claimant agreed it was the correct amount. Debtors denied the loan for a HAMP Modification on June 13, 2012 due to an inability to reduce payment low enough to meet the guidelines. Debtors noted that the account may be eligible for the HAMP Tier 2 program set to begin in July 2012.</p> <p>Claimant spoke with Debtors via phone on June 15, 2012. Debtors advised Claimant of the HAMP denial due to an inability to reduce the payment low enough. Debtors advised Claimant that HAMP guidelines were in the process of changing and that it will hold the account in loan modification review to review when new guidelines come out.</p> <p>Debtors reviewed account for HAMP Tier 2 modification and loan was denied on July 13, 2012 due to the debt to income ratio that would be achieved with the modification being outside of the guidelines. Debtors continued to review the account for traditional modification options. Claimant spoke with Debtors via phone on July 16, 2012. Debtors advised Claimant of the HAMP modification denial but that the account was still under review for a traditional modification. Claimant spoke with Debtors via phone on July 19, 2012. Debtors advised Claimant that the Debtors had submitted a request to postpone the foreclosure sale. Debtors denied the account for a traditional modification on July 23,</p>	

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			<p>2012 due to the Claimant having insufficient income to support a loan modification. Claimant spoke with Debtors via phone on July 23, 2012. Foreclosure attorney verified foreclosure sale date will be moved to a new date. Debtors advised Claimant of the loan modification denial and also advised Claimant that she was able to consider a short sale of property.</p> <p>Debtors received notice on October 8, 2012 of Claimant filing Chapter 7 Bankruptcy in the Southern District of Indiana Bankruptcy Court, case number 1-271518 on October 5, 2012. Debtors were granted relief from the bankruptcy on December 11, 2012. Claimant's bankruptcy was dismissed on January 8, 2013. Claimant did not reaffirm the debt. Servicing of the account was transferred to Ocwen Loan Servicing on February 16, 2013.</p>	
3711	<p>Paul Ciaramitaro</p> <p>\$295,957</p> <p>GMAC Mortgage, LLC</p> <p>2407 Davis Lane Antioch, CA 94509</p> <p>527 Texas Street Antioch, CA 94509</p>	<p>Standing Issues, Wrongful Foreclosure, General No Liability</p>	<p>Debtors records show Claimant had three loans that involved Debtors. Two of the loans, a 1st mortgage and a 2nd mortgage, were secured by one property in Antioch, CA (respectively, the "Antioch 1st Loan" and the "Antioch 2nd Loan"). Claimant's third loan was a 1st mortgage secured by a property in Brentwood, CA (the "Brentwood Loan").</p> <p>The Antioch 1st Loan was originated by GMAC Mortgage Corporation on October 19, 2002. Debtor transferred its ownership interest in the loan to Fannie Mae on or about February 4, 2004. Debtor GMAC Mortgage serviced the loan from origination until servicing transferred to GreenTree Servicing on February 1, 2013.</p> <p>The Antioch 2nd Loan was originated by GMAC Mortgage Corporation on October 19, 2002. GMAC Mortgage Corporation transferred its ownership interest in the loan to Specialized Loan servicing on or about September 27, 2006. Debtor GMAC Mortgage</p>	6-7, 8-9, 10

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>serviced the loan from origination until servicing transferred to Specialized Loan Servicing on October 1, 2009.</p> <p>The Brentwood Loan was originated by GMAC Mortgage Corporation on October 24, 2003. GMAC Mortgage Corporation transferred its ownership interest in the loan to Fannie Mae on or about February 4, 2004. Debtor GMAC Mortgage serviced the loan from origination until servicing transferred to GreenTree Servicing on February 1, 2013.</p> <p>Claimant states "mortgages" as basis for claim in box 2 of the proof of claim form. In an attachment to the proof of claim, Claimant asserts that Debtor "does not have sufficient proof of its claimed interest in my home and may be using forged documents to support is foreclosure claim". Claimant also attached a document with a handwritten note that alleges the Brentwood Loan was "given to SLS (Specialized Loan Servicing LLC) from GMAC without my permission." A letter requesting additional information in support of Claimant's claim was mailed to Claimant by Debtors on June 21, 2013, however, Claimant failed to respond.</p> <p>Debtors have no liability for the lack-of-standing claims asserted by Claimant because for each loan that Debtor serviced for Claimant, Debtors' records show the mortgage, note endorsements and underlying agreements with the respective investors for whom Debtors serviced the loans all give proper standing to Debtors to service the loan. With respect to the Antioch 1st Loan, Antioch 2nd Loan and Brentwood Loan , i) the mortgages correctly show GMAC Mortgage Corporation as the lender and MERS as a nominee for Lender and Lender's successors and assigns and as beneficiary under the security</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>instrument, and ii) the notes correctly show GMAC Mortgage Corp as the lender. Debtors have no liability for the allegation that Debtor transferred the Antioch 2nd Loan to Specialized Loan Servicing, LLC without Claimant's permission because Paragraph 11 of the Antioch 2nd Loan states that "GMAC may transfer its rights and duties at any time, without notice". Nevertheless, Debtors' records show Debtor sent Claimant a notice dated September 16, 2009 stating that servicing was to be transferred to Specialized Loan Servicing effective October 1, 2009.</p> <p>If it is Claimant's contention that GMAC Mortgage Corporation did not properly transfer or assign its rights under the notes and mortgages to GMAC Mortgage LLC, Debtors have no liability. GMAC Mortgage Corporation did not transfer, sell or assign any interest in the loans to GMAC Mortgage LLC. GMAC Mortgage Corporation converted from a corporation to an LLC by merger on October 24, 2006. The merger or name change did not constitute an event requiring notice to Claimant under RESPA, TILA or any statute because there was no transfer, sale or assignment of Claimant's loan in connection with the merger.</p> <p>Claimant seems to indicate that its claim is related to "its (Debtors) foreclosure claim", however, Debtors records show none of Claimant's three loans was ever referred to foreclosure while Debtor serviced the loans. At the time servicing was transferred for each of the three loans, the loans were current.</p>	
3728	Kenneth C. Thomas \$291,472	Loan Modification Issues, General	United Home Loans Inc. originated the loan on March 28, 2008. Non-Debtor GMAC Bank purchased the loan from United. Debtor GMAC Mortgage purchased the loan from GMAC Bank and transferred its interest to Fannie Mae on or about May 23, 2008. Debtor GMAC	7-8, 12-14

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
	GMAC Mortgage, LLC Gerald D. Chambers 1464 S. Michigan Ave. Unit 1705 Chicago, IL 60605	Servicing Issues	<p>Mortgage LLC serviced the loan from March 28, 2008 until servicing transferred to Ocwen Loan Servicing, LLC on February 16, 2013.</p> <p>Claimant asserts "Mortgage" as basis for claim in box 2 of the proof of claim form. Claimant attached a copy of the mortgage to the proof of claim, but provided no other documentation or explanation of the basis for claim. On May 20, 2013, Debtors sent Claimant a letter requesting additional information and documentation in support of the claim. Claimant responded by email on June 20, 2013 stating, "The reason we believe we are owed and/or entitled to relief is that GMAC through its alliance with ResCap and Ally Bank engaged in fraudulent and improper activity leading to its bankruptcy. On several occasions in the last 2-3 years, we have attempted to obtain a loan modification from GMAC and were denied each and every time. My loan was in the process of foreclosure; however, I was never properly served by GMAC's law firm. In the Proof of Claim information your office sent -- you stated that "those in the process of foreclosure should do nothing". GMAC and the other entities that make up ResCap, along with its representatives, would have continued the practices except for the fact that it caused them to declared bankruptcy. My loan has been modified and reinstated since the purchase of the GMAC loan from Ocwen."</p> <p>Debtors have no liability for allegations of wrongful denial of loan modification or any mishandling of loss mitigation efforts because in every instance, Debtors considered Claimant for loss mitigation options, Debtors acted in accordance with Debtors standard business practices, applicable loan modification guidelines, and the terms of the mortgage and note. Additionally, Debtors have no liability because Claimant has failed to</p>	

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Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>demonstrate how they were damaged by this assertion, particularly in the light of two facts: i) Debtors approved Claimant for a trial modification plan on or about November 20, 2012, twelve days after Claimant filed the proof of claim, and ii) upon successful completion of the trial modification plan provided by Debtors, Ocwen provided Claimant with a permanent loan modification on April 17, 2013. Prior to approving Claimant for a trial loan modification in November 2012, Debtors' records show Debtors explored several alternatives to foreclosure with Claimant. Debtors' records show that Debtor set up several repayment plans for Claimant; however, those plans were cancelled due to Claimant's bank having insufficient funds for the checks Claimant submitted to Debtors. Debtors' records also show Debtors sent several HAMP and HOPE solicitation letters and work out packages from 2011 to 2012, without response from Claimant. Debtors ultimately approved Claimant for a trial modification plan on May 14, 2012, but that plan was properly cancelled/denied on July 10, 2012 because Claimant failed to send in the first required payment.</p> <p>Debtors have no liability for Claimant's assertion that they were not properly served by GMAC's law firm while in process of foreclosure. Debtors' records show that Debtors satisfied all noticing requirements in accordance with applicable law. Among other relevant records, Debtors possess several copies of notices provided to Claimant, as well as copies of affidavits of service and affidavits to allow service by publication filed with the court. Notwithstanding Debtors properly served or noticed Claimant of foreclosure-related filings, Debtors have no liability because Claimant has failed to demonstrate how they were damaged. Debtors' records show that upon Claimant obtaining a loan</p>	

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			modification, the related foreclosure action was closed.	
1397	<p>Leilani R. Sulit</p> <p>\$280,000</p> <p>GMAC Mortgage, LLC</p> <p>3415 N. Odell Ave. Chicago, IL 60634</p> <p>Leilan Sulit</p> <p>3315 N. Oak Park Ave. Chicago, IL 60634</p>	<p>Origination Issues, General</p> <p>No Liability</p>	<p>The loan was originated by BankUnited on October 17, 2006. After the mortgage's origination, GMAC Mortgage, LLC purchased the loan from BankUnited FSB and then securitized the loan into HarborView Mortgage Loan Trust 2006-14 where Deutsche Bank National Trust Company was named as trustee. GMAC Mortgage, LLC serviced Mrs. Sulit's mortgage from January 11, 2007 until servicing transferred to Ocwen on or about February 16, 2013.</p> <p>Ms. Sulit asserts a \$280,000 secured claim against GMAC Mortgage, LLC in connection with the mortgage on Mr. and Mrs. Sulit's residence in Chicago, Illinois. The only supporting documentation is a letter from GMAC Mortgage, LLC to Mrs. Sulit dated September 18, 2012, regarding an interest rate change to her mortgage. On May 20, 2013, Debtors sent a letter to Claimant requesting additional information and documentation in support of claim; however, no response was received. On July 4, 2013, Debtors filed Debtors' Twentieth Omnibus Objection to Claims (Borrower Claims with Insufficient Documentation), which objected to Claim No. 1397 (among other claims) on the basis that it lacked sufficient documentation and is unsupported by the Debtors' books and records. On or about July 11, 2013, Patricio Sulit, the husband of Claimant Leilani Sulit, filed a reply to Debtors objection (the "Response"). Mr. Sulit attached a copy of Mrs. Sulit's mortgage deed, which was originated by BankUnited FSB on October 17, 2006 (and is signed by both Mr. Sulit and Ms. Sulit). The Response states that <u>Mr. Sulit's signature (not Ms. Sulit's)</u> was forged on the deed (which he refers to as the note), attached to the Response. The</p>	6-7, 8

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Objection was continued by the Court's Order Establishing Procedures for the Adjudication of Claims of Brian Admond Bath, Ailette Cornelius, and Leilani Sulit in Connection with the Debtors' Eighteenth and Twentieth Omnibus Objections to Claims [Docket No. 5324]. The Debtors attempted to reach a settlement agreement but were unsuccessful.</p> <p>Debtors' records show i) Mr. Sulit is not a borrower on the loan/note, ii) the loan application, note, and closing documents were all signed only by Ms. Sulit, iii) the loan application indicates that title will be held by "Leilani I Sulit and Patricio L Sulit", and iv) Claimant never communicated to Debtor any concerns with forged documents.</p> <p>Debtors have no liability for the assertions of forgery at origination raised by Mr. Sulit in the Response because i) Mr. Sulit is not a co-borrower on the note, and it is not clear or explained how Claimant (Leilani Sulit) was damaged by the alleged forgery, ii) nothing in the Debtors' books and records suggests that the Debtors had any involvement in the origination of Ms. Sulit's mortgage by BankUnited FSB. As a result, the Debtors cannot be held liable for any alleged forgery that took place in the origination process. Ms. Sulit has not introduced any evidence to the contrary.</p> <p>In addition, even if GMAC Mortgage, LLC had been involved in the alleged forgery of Mr. Sulit's name on the deed, that forgery would not support a valid claim against the Debtors' estates by Ms. Sulit because Mr. Sulit is not a signatory to the mortgage note, the Note establishes liability to repay the mortgage loan. Only Ms. Sulit is a signatory to the mortgage note and she has not alleged that her signature has been forged. Accordingly,</p>	

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			the Sulit Claim should be disallowed and expunged because Ms. Sulit fails to identify and substantiate a valid claim that she has, as a borrower, against the Debtors.	
4108	Karina Kowalczyk \$250,000 GMAC Mortgage, LLC 608 Margaret Place Elgin, IL 60120	Wrongful Foreclosure, Loan Modification Issues	<p>Chicago Bankcorp originated the loan on June 10, 2005. Non-Debtor GMAC Bank purchased the loan from Chicago Bankcorp. Debtor GMAC Mortgage purchased the loan from GMAC Bank and transferred its interest to Fannie Mae on or about July 26, 2005. Debtor GMAC Mortgage LLC serviced the loan from June 24, 2005 until the August 9, 2012 REO sale. The foreclosure sale occurred December 2, 2011.</p> <p>Claimant asserts "Foreclosed on even though I tried modification numerous times approx. 45,000 down payment + payments" as basis for claim in box 2 of the proof of claim form. On May 24, 2013 Debtors mailed a letter to Claimant requesting additional information in support of Claimant's claim. Claimant responded by letter on June 28, 2013, stating "I put 45,000+ down on mortgage. Tried to apply 4+ times for mortgage modification due to loss of income. House was valued @ 300,000 at one point. Was told would sell for about 130,000. I owed 250,000. I wanted to stay but they forced me out and unwilling to work with me. Was left homeless with a child with a disability. I make only 25,000/year. I believe I am entitled to my down payment plus money paid toward principal minus the interest." Claimant did not attach any evidence in support of the allegations.</p> <p>Debtors have no liability for wrongful foreclosure because in every instance Debtors conducted foreclosure steps i) Debtors acted in accordance with Debtors' standard policies and procedures and the terms of the Claimant's note and mortgage, and ii) Claimant was significantly past due on her account and had not made arrangements to</p>	8-9, 12-14

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			<p>bring Claimant's account current with a repayment plan or loan modification. Debtors' records show the account was referred to foreclosure on December 29, 2010 because the account was owing for July through December 2010 payments.</p> <p>Debtors have no liability for assertions of wrongful denial of loan modification because in every instance Claimant was denied a modification, Claimant either did not meet the applicable investor or HAMP guidelines for modification, or Claimant failed to provide the requisite information in order to be considered for modification. Furthermore, in each instance that Claimant was offered a repayment plan or trial modification plan, Claimant failed to meet the terms of those agreements by failing to make the required payments.</p> <p>The below chronology of servicing events support the reasons noted above: Claimant spoke with Debtors via phone on August 4, 2008. Claimant stated she cannot refinance and is interested in lowering her mortgage payment. Debtors took verbal financial information from Claimant and Claimant's information reflected a negative surplus. Claimant stated she will be placing the property on the market the following week.</p> <p>Claimant spoke with Debtors via phone on February 11, 2009. Claimant stated that she would like to apply for a loan modification. Debtors advised her that it will mail her a workout package. Debtors received a workout package from Claimant on February 25, 2009. On March 2, 2009, Debtors denied the account for traditional loan modification because the Claimant had insufficient income. Debtors mailed denial letter to Claimant.</p>	

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			<p>Debtors received workout a package from Claimant on May 11, 2009 and received additional workout package documents from Claimant on June 9, 2009. Debtors denied the account for a HAMP and traditional modification on June 16, 2009 due to Claimant's workout package showing insufficient income to support either a HAMP modification or a traditional modification. Debtors mailed denial letter to Claimant.</p> <p>Debtors received a workout package from Claimant on April 20, 2010. Debtors denied the account for a HAMP and a traditional loan modification on April 21, 2010 as Claimant's workout package indicated the property was not owner occupied and owner occupancy was an eligibility requirement for loan modification. Debtors mailed Claimant a denial letter. Claimant spoke with Debtors via phone on April 27, 2010 and asked the reason for the denial. Debtors advised her that the modification was denied because the package received indicated the property is not owner occupied. Debtors advised Claimant that it can send in a copy of a utility bill as proof of occupancy. Debtors received additional documents for workout package, including a utility bill. Debtors denied account for HAMP and traditional loan modification on April 30, 2010, as Claimant's workout package indicated the property is not owner occupied. Debtors mailed Claimant a denial letter.</p> <p>It appears that this determination may have been made without reviewing the utility bill submitted by claimant. A review of the income and expenses provided by claimant indicate that the account would also have been denied for insufficient income.</p> <p>Claimant filed for chapter 7 bankruptcy, case number 10-21689, on May 14, 2010. Debtors were granted a motion for stay relief on July 20, 2010. Claimant's chapter 7</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

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			<p>bankruptcy was discharged on August 17, 2010. Claimant did not reaffirm the debt.</p> <p>Debtors mailed breach letters to Claimant on July 21 and August 11, 2010. Debtors received a workout package from Claimant on August 11, 2010. Debtors mailed a 30 day missing items letter to Claimant on August 17, 2010 as documents were missing for modification review. Debtors received additional documents from Claimant for a workout package on September 14 and September 29, 2010. Debtors denied the account for a HAMP modification on September 30, 2010 due to the Debt to Income (DTI) ratio being below 25%. Debtors mailed a denial letter to Claimant and continued reviewing the account for traditional modification options. Debtors approved account for 6 month repayment plan on October 7, 2010 with payments of \$2,424.39 with the first payment due October 21, 2010 and future payments due on the 21st of each month. Claimant did not make the repayment plan payment due on October 21, 2010 and the repayment plan was cancelled on November 24, 2010. Debtors mailed a Breach letter to Claimant on November 25, 2010.</p> <p>Debtors received a workout package from Claimant on December 8, 2010. Debtors received additional documents from Claimant for the workout package on December 27, 2010. Debtors referred the account to foreclosure on December 29, 2010. Debtors approved the account for a HAMP Trial Plan on January 7, 2011 with payment of \$1397.81 due on the 1st of February, March and April 2011. Debtors mailed claimant a trial plan letter. Debtors closed down trial plan on March 7, 2011 as the trial payment due on February 1, 2011 was not received. Debtors mailed a denial letter to Claimant on March 11, 2011.</p>	

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			On September 6, 2011 the foreclosure sale was scheduled for December 2, 2011. The foreclosure sale was held on December 2, 2011. Property was sold back to beneficiary.	
3868	Carlos Lopez Plaintiff vs. GMAC Mortgage LLC fka GMAC Mortgage Corporation Thomas E Black Jr Trustee Mortgage et al \$105,930 GMAC Mortgage, LLC Law Office of Edward P. Cano 201 W. Poplar St. San Antonio, TX 78212	Res Judicata	Debtor GMAC Mortgage Corporation originated the loan on October 1, 2002. Debtor transferred its interest to Lehman Brothers Bank, FSB on or about February 1, 2003. Debtor GMAC Mortgage, LLC serviced the loan from origination until servicing transferred to Ocwen Loan Servicing on February 16, 2013. Claimant attaches to her proof of claim litigation against Debtor GMAC Mortgage, LLC and others in USDC, Western District of TX, San Antonio Division, Case No. 5:12-CV-00521. The First Amended Complaint and application for TRO was filed June 12, 2012. On February 18, 2014, the case was dismissed by Summary Judgment. Claimant did not file an appeal. A copy of the order dismissing the case on summary judgment is attached to the Objection as <u>Exhibit 5</u> . Accordingly, since the claim is predicated on the litigation, the final adjudication of the litigation in Debtors' favor warrants disallowance of the claim.	12
2452	Ms. Leslie D. Watley UNLIQUIDATED GMAC Mortgage, LLC	Judicial Estoppel and Standing	Debtor Homecomings Financial, LLC originated the loan on April 4, 2008. Debtor GMAC Mortgage, LLC purchased the loan from Homecomings. GMAC Mortgage, LLC transferred its interest to Fannie Mae on or about May 7, 2008. Debtor Homecomings serviced the loan from April 4, 2008 until servicing transferred to GMAC Mortgage, LLC on July 1, 2009. GMAC Mortgage, LLC serviced the loan until servicing transferred to GreenTree Servicing,	11-12

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
	<p>22 Conhurst Drive North Haven, CT 06473</p> <p>Jerome N. Frank Legal Services Organization J.L. Pottenger, Jr. P.O. Box 209090 New Haven, CT 06520-9090</p>		<p>LLC on February 1, 2013.</p> <p>Claimant attaches to her poof of claim a foreclosure action filed by the Debtors in the Judicial District of New Haven, Superior Court, Case No. NNH-CV-10-6015961. In that action, the Claimant filed an answer, special defenses, and a counterclaim. The allegations relate to an alleged loan modification in 2009.</p> <p>Debtors have no liability for any of the claims asserted in the proof of claim because Claimant effectively waived the claims in Claimant's personal bankruptcy, and therefore, is estopped from asserting the claims against the Debtors. Debtors' records and research shows i) Claimant filed for chapter 7 bankruptcy protection in the U.S. Bankruptcy Court for the District of Connecticut, Case No. 12-32625, on November 30, 2012 and received an order of discharge March 13, 2013, and ii) Claimant's schedules filed in her chapter 7 case does not show any liquidated, unliquidated or contingent claims against any of the Debtors that are consistent with the allegations in the Claimant's proof of claim, and iii) all of the allegations and issues of fact regarding the proof of claim occurred prior to the Claimant's chapter 7 petition date and subsequent discharge.</p>	
3670	<p>Angelo Mariani Jr. \$470,000 GMAC Mortgage, LLC P.O. Box 2481</p>	Res Judicata, General No Liability	<p>New Century Mortgage Corporation originated the loan on November 23, 2005. Debtor Residential Funding Company, LLC ("RFC") purchased the loan from New Century. Debtor transferred its interest when the loan was securitized on or about April 1, 2006 where JP Morgan Chase Bank, NA was appointed as Trustee. Debtor Homecomings Financial serviced the loan from February 22, 2006 until servicing transferred to GMAC Mortgage, LLC on July 1, 2009. GMAC Mortgage serviced the loan until servicing transferred to</p>	12

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
	Kamuela, HI 69743		<p>Ocwen Loan Servicing, LLC on February 16, 2013.</p> <p>In his proof of claim, Claimant lists litigation, Circuit Court of the Third Circuit, State of Hawaii, Civil No. 09-01-339K as his basis for damages. The litigation was originally filed by Claimant on September 17, 2009 against Bank of New York Mellon Trust Company as successor to JP Morgan Chase Bank. Complaint was later amended on February 27, 2012 when Debtor, RFC, filed a complaint in Intervention for Ejectment (essentially an eviction action) because RFC held title to the property by virtue of a Grant Deed from Bank of New York Trust Company. In response to the Ejectment, Claimant filed an amended answer, counterclaim (against RFC) and cross claim (against Bank of New York Trust Company). A corrected Quit Claim deed was recorded on September 23, 2014 from RFC to Bank of New York Mellon Trust Company. RFC has no further interest in the property.</p> <p>The proof of claim was originally filed against Residential Capital, LLC, and was reclassified as a claim against GMAC Mortgage, LLC by the <i>Order Granting Debtors' Thirty-Sixth Omnibus Objection to Claims (Misclassified and Wrong Debtor Borrower Claims)</i> [Docket No. 5895]. Given that the alleged basis of the claim is a lawsuit against RFC, a potential claim may lie against Debtor RFC as well. If the Court is not prepared to expunge the claim, the Borrower Trust will treat the claim as asserted against RFC. For purposes of the Objection, the Borrower Trust addresses the claim as asserted against both RFC and GMAC Mortgage, LLC.</p> <p>On June 16, 2014, the Court granted summary judgment in favor of Bank of New York Mellon Trust Company and RFC. On July 17, 2014, the Court entered the following</p>	

Exhibit A - Seventy-Sixth Omnibus Objection – No Liability Borrower Claims

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Orders:</p> <ul style="list-style-type: none"> (1) Defendant The Bank of New York Mellon Trust Company, National Association FKA The Bank of New York Trust Company, N.A. as successor to JP Morgan Chase Bank N.A. as Trustee for Ramp 2006RS3's Motion for Summary Judgment as to Plaintiff Angelo M. Mariani, Jr.'s Complaint filed on September 17, 2009; (2) Complainant-Intervenor Residential Funding Company, LLC's Motion for Summary Judgment on its Complaint In Intervention For Ejectment; and (3) Counter/Cross-Defendants The Bank of New York Mellon Trust Company, National Association FKA The Bank of New York Trust Company, N.A. as Successor to JP Morgan Chase Bank N.A. as Trustee For Ramp 2006RS3's and Residential Funding Company, LLC's Motion for Summary Judgment as to Counter/Cross-Complainant Angelo M. Mariani, Jr.'s Counter-Claim and Cross-Claim filed on March 19, 2012; 2. Notice of Entry of Judgment for Possession; 3. Judgment for Possession; 4. Notice of Entry of Final Judgment as to: (1) Plaintiff Angelo M. Mariani, Jr.'s Complaint filed on September 17, 2009; and (2) Counter/Cross-Complainant Angelo M. Mariani, Jr.'s Counter-Claim and Cross-Claim filed on March 19, 2012; and 5. Final Judgment as to: (1) Plaintiff Angelo M. Mariani, Jr.'s Complaint filed on September 17, 2009; and (2) Counter/Cross-Complainant Angelo M. Mariani, Jr.'s 	

Claim No.	Name and Address Claim Amount Asserted Debtor Name	Reason(s) for Disallowance	No Liability Summaries	Corresponding Page # in Omnibus Objection
			<p>Counter-Claim and Cross-Claim filed on March 19, 2012.</p> <p>These orders amounted to a final judgment on the merits in favor of RFC with regard to the foreclosure action and the litigation related to the foreclosure.</p> <p>The time for appeal on the orders has passed. Copies of the orders are attached to the objection as <u>Exhibits 6-1 through 6-5</u>.</p> <p>Accordingly, since the claim is predicated on the litigation, the final adjudication of the litigation in favor of RFC means that any claim against RFC is barred by the doctrine of res judicata. Additionally, the claim does not assert any basis for liability against GMAC Mortgage, LLC because GMAC Mortgage, LLC was not named in the lawsuit that serves as the basis for the proof of claim and the claim asserts no other basis for liability against GMAC Mortgage, LLC.</p>	

Exhibit 2

Priore Declaration

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

_____)	
In re:	)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
_____)	

**DECLARATION OF KATHY PRIORE IN SUPPORT OF
RESCAP BORROWER CLAIMS TRUST’S SEVENTY-SIXTH OMNIBUS
OBJECTION TO CLAIMS (NO LIABILITY BORROWER CLAIMS)**

I, Kathy Priore, hereby declare as follows:

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

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

Borrower Claims Trust (the “Borrower Trust”) in connection with the claims reconciliation process.¹ I am authorized to submit this declaration (the “Declaration”) in support of the *ResCap Borrower Claims Trust’s Seventy-Sixth Omnibus Objection to Claims (No Liability Borrower Claims)* (the “Objection”).²

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

4. In my capacity as Associate Counsel, I am intimately familiar with the claims reconciliation process in these Chapter 11 Cases with regard to Borrower Claims. Except as otherwise indicated, all statements in this Declaration are based upon my familiarity with the Debtors’ books and records, the Debtors’ schedules of assets and liabilities and statements of financial affairs filed in these Chapter 11 Cases (collectively, the “Schedules”), my review and reconciliation of claims, and/or my review of relevant documents. I or my designee at my direction have reviewed and analyzed the proof of claim forms and supporting documentation, if any, filed by the claimants listed on Exhibit A annexed to the Proposed Order. Since the Plan became effective and the Borrower Trust was established, I, along with other members of the

¹ The ResCap Liquidating Trust and the ResCap Borrower Claims Trust are parties to an Access and Cooperation Agreement, dated as December 17, 2013, which, among other things, provides the Borrower Trust with access to the books and records held by the Liquidating Trust and Liquidating Trust’s personnel to assist the Borrower Trust in performing its obligations.

² Defined terms used but not defined herein shall have the meanings ascribed to such terms as set forth in the Objection.

Liquidating Trust's management or other employees of the Liquidating Trust have consulted with the Borrower Trust to continue the claims reconciliation process, analyze claims, and determine the appropriate treatment of the same. In connection with such review and analysis, where applicable, I or the Liquidating Trust personnel under my supervision, and the Liquidating Trust's and the Borrower Trust's professional advisors have reviewed (i) information supplied or verified by former personnel in departments within the Debtors' various business units, (ii) the Debtors' books and records, (iii) the Schedules, (iv) other filed proofs of claim, and/or (v) the Claims Register maintained in the Debtors' Chapter 11 Cases.

5. The Liquidating Trust, in support of the Borrower Trust, diligently evaluated any information provided by the claimants who filed the No Liability Borrower Claims, listed on Exhibit A to the Proposed Order. In accordance with the Borrower Claim Procedures, the Debtors previously contacted those Borrowers who filed the No Liability Borrower Claims whose claims were filed with insufficient or no supporting documentation and requested that they provide additional information so that the Debtors could reconcile such claimants' filed claims with the Debtors' books and records. Beginning in May of 2013, the Debtors sent Request Letters, substantially in the form as those attached at Exhibit 4 to the Objection, to the applicable Borrowers requesting additional documentation in support of their respective No Liability Borrower Claims. The Borrowers who received the Request Letters either failed to respond to the Debtors' requests or failed to provide sufficient information to establish a basis for liability.

6. At my direction and with my oversight, the Liquidating Trust, in support of the Borrower Trust, thoroughly reviewed the No Liability Borrower Claims listed on Exhibit

A to the Proposed Order, together with information contained within the Debtors' books and records.

7. These efforts led to the conclusion that there is no present liability due and owing to such claimants and the specific objections to the allowance of such claims are set forth on Exhibit A to the Proposed Order in the column titled "*No Liability Summaries.*" The explanations for the requested disallowance of each claim set forth under the heading titled "*No Liability Summaries*" are incorporated by reference into this Declaration as if fully set forth herein.

8. In general, the Borrower Trust's objection to each No Liability Borrower Claim falls under one or more of the following thirteen categories:

- (i) **General No Liability.** This category includes claims:
- asserting that a Debtor is responsible for liabilities of non-Debtor entities;
 - related to conclusions made by non-Debtor entities that do not have the ability to impute liability to the Debtors for the benefit of Claimants in connection with the Chapter 11 Cases;
 - asserting that a Debtor is liable based on litigation to which the Debtor is not a party; or
 - that otherwise do not constitute a valid obligation of the Debtors (collectively, the "General No Liability Claims").

To assess the validity of these claims, the Liquidating Trust, in support of the Borrower Trust, reviewed the Debtors' books and records that were prepared and kept by the Debtors in the course of their regularly conducted business activities, including (a) the claimant's transaction history showing the payments the claimant has made and the Debtors' application of those payments to principal, interest, fees, and escrows, as applicable (the "Loan Payment History"), (b) the Debtors' records tracking the history of the servicing of the claimant's loan, including but not limited to documenting instances of i) communication with the claimant, ii) letters and notices sent by the Debtors to the claimant, and iii) the Debtors' efforts to foreclose, conduct loss mitigation efforts, inspect properties, pay taxes and insurance on behalf of the claimant, and other standard servicing activity (collectively, the "Internal Servicing Notes"), and (c) other records that are specifically identified in the Objection. See Objection at pp. 6-7. Based on this review, the General No Liability Claims are not valid liabilities of the Debtors.

- (ii) **General Servicing Issues.** This category includes claims based on general servicing issues, including assertions that a Debtor misapplied mortgage payments, provided

incorrect information or reporting to the claimant, made improper collection calls, failed to release a lien on a timely basis, failed to respond to Qualified Written Requests, wrongfully transferred servicing or wrongfully sold the claimant's loan (the "General Servicing Issues Claims"). To assess the validity of these claims, the Liquidating Trust, in support of the Borrower Trust, reviewed the Debtors' books and records that were prepared and kept by the Debtors in the course of their regularly conducted business activities, including the Internal Servicing Notes, Loan Payment History, letters between the Debtors and the applicable Borrower(s), executed mortgage notes and deeds of trust, and other relevant documents that are specifically identified in the Objection. See Objection at pp. 7-8.

Based on this review, the General Servicing Issues Claims are not valid obligations of the Debtors because: (a) the alleged events involving General Servicing Issues never took place; (b) the Debtor remedied the alleged error or mishandling, and as a result, the Claimant did not incur any damages or failed to provide evidence of damages; and/or (c) the Debtor acted properly in servicing the loan, in accordance with the Debtors' standard policies and procedures and the terms of the executed note and deed of trust.

- (iii) **Origination Issues**. This category includes claims based on loan origination issues, which include, without limitation, claims relating to disputes regarding the loan application and closing process, disclosures, loan terms, rights of rescission or a purportedly defective title exam (the "Origination Issues Claims"). To assess the validity of these claims, the Liquidating Trust, in support of the Borrower Trust, reviewed the Debtors' books and records that were prepared and kept by the Debtors in the course of their regularly conducted business activities, including the claimants' executed mortgage notes and other documents that are specifically identified in the Objection, see Objection at p. 8, to determine whether any Debtor was involved in the origination of the applicable loans, and if so, if the claim would be barred by the applicable statute of limitations.

Based on this review and the Borrower Trust's review of applicable state and federal law, the Origination Issues Claims are not valid liabilities of the Debtors because either (1) no Debtor entity was involved in the origination of the applicable loans and vicarious liability cannot be imputed to any Debtor in its capacity as servicer or assignee of the loans, or (2) the claim is barred by the applicable statute of limitations.

- (iv) **Wrongful Foreclosure**. This category includes claims based, either directly or indirectly, on allegations of wrongful foreclosure by the Debtors (the "Wrongful Foreclosure Claims").

To assess the validity of these claims, the Liquidating Trust, in support of the Borrower Trust, reviewed the Debtors' books and records that were prepared and kept by the Debtors in the course of their regularly conducted business activities, to verify that the Debtors foreclosed properly and, where applicable, took the appropriate loss mitigation steps. Specifically, the Borrower Trust reviewed Payment History, Internal Servicing Notes, as well as, where applicable, the claimants' loan modification applications, loan modification approval letters, loan modification denial letters, compliance with loan

modifications (trial and/or permanent), compliance with any other payment plans (forbearance and repayment), short sale applications and history, investor guidelines and/or direction, breach letters, and/or foreclosure related documents. Where a claimant asserted that he or she did not execute the mortgage note, the Borrower Trust also compared the signatures on other executed documents in the claimant's file, as well as examining the Loan Payment History and any other information in the Debtors' possession. Moreover, where a Wrongful Foreclosure Claim was based on issues related to a short sale, the Borrower Trust further reviewed the Debtors' records to determine whether a short sale approval had been requested, and, if so and if such request was denied, whether the reason for denial was proper.³ See Objection at pp. 8-9.

Based on this review, the Wrongful Foreclosure Claims are not valid liabilities of the Debtors.

- (v) **Standing Issues**. This category includes claims alleging that the Debtors lacked standing to service, foreclose or otherwise enforce the terms of the claimant's loan (the "Standing Issues Claims"). To assess the validity of these claims, the Liquidating Trust, in support of the Borrower Trust, reviewed the Debtors' books and records that were prepared and kept by the Debtors in the course of their regularly conducted business activities, including the claimant's mortgage or deed of trust, documents relating to chain of ownership, relevant assignments of interests in the loan, Loan Payment History, and Internal Servicing Notes. Based on this review, the Standing Issues Claims are not valid liabilities of the Debtors because the Debtors had proper authority to service or foreclose the loan and to enforce the terms of the claimant's loan on behalf of the owner of the loan. See Objection at pp. 10.
- (vi) **Interest Rates and Fees Collected**. This category includes claims based on assertions that either (a) interest rates charged to the claimant were incorrect, incorrectly adjusted, or incorrectly not adjusted (the "Interest Rates Claims") or (b) the fees charged to the claimant were incorrect or inappropriate (the "Fees Collected Claims," and together with the Interest Rates Claims, the "Interest Rates and Fees Collected Claims"). To assess the validity of these claims, the Liquidating Trust, in support of the Borrower Trust, reviewed the Debtors' books and records that were prepared and kept by the Debtors in the course of their regularly conducted business activities, including the claimant's note, any adjustable rate rider and related documents, notices and/or adjustment letters sent to the claimant, Loan Payment History and fees charged, and other documents that are specifically identified in the Objection. See Objection at p. 10-11. Based on this review, the Interest Rates and Fees Collected Claims are not valid liabilities of the Debtors because the interest rates and fees charged were consistent with the governing loan documents, the Debtors' servicing policies, and if applicable, investor guidelines and/or servicing agreements.

³ Appropriate reasons for denying a short sale request include, without limitation, a claimant's failure to submit executed sale contracts, a claimant's failure to obtain approval from second lien holders and/or a claimant's short sale request did not comply with the investor's requirements.

(vii) **Judicial Estoppel and Standing.**

This category includes claims barred from relief because the Claimants effectively waived their right to pursue the Claim against the Borrower Trust because the Claimant failed to affirmatively assert the Judicial Estoppel Claims in their respective bankruptcy cases (all of which have been closed), and therefore, it is my understanding that they are judicially estopped from bringing those same claims in the Debtors' Chapter 11 Cases (the "Judicial Estoppel Claims"). See Objection at pp. 11-12.

With respect to the Judicial Estoppel Claims, the Borrower Trust examined the proofs of claims in conjunction with public bankruptcy records and validated that:

- (a) Claimant filed for individual bankruptcy protection and received a discharge,
- (b) the basis for claim comprising each of the Judicial Estoppel Claims involves assertions and alleged damages that occurred prior to Claimant's respective individual bankruptcy filing(s),
- (c) Claimant did not include the Judicial Estoppel Claims in the schedule of assets filed by Claimant in their bankruptcy case(s), and
- (d) Claimant never raised such claims in any other proceeding during their individual bankruptcy case (e.g., an adversary proceeding).

(viii) **Res Judicata.** This category includes claims related to litigation that has already been adjudicated (the "Res Judicata Claims"). The Borrower Trust diligently reviewed the case notes from the Debtors' internal electronic case management system and the Debtors' internal files, relating to the litigation, including relevant underlying documents such as the note, loan agreement and/or deed of trust (the "Litigation File"). In each case, the Debtors or the Liquidating Trust (on behalf of the Borrower Trust) as applicable, supplemented the Litigation File by reaching out to the outside counsel who previously handled the litigation for the Debtors to obtain a current update as to the status of the litigation, as well as copies of any relevant case dockets, complaints, answers, counterclaims, motions, responsive pleadings, judgments, orders, and any other relevant documents relating to the underlying litigation. The allegations set forth in each Res Judicata Claim were compared to the information contained in the Litigation Files (as supplemented with information provided by outside counsel), as well as the Debtors' books and records. See Objection at pp. 12.

(ix) **Loan Modification.** This category includes claims based on loan modification issues (the "Loan Modification Claims"), which allege, among other things, that the Debtors (a) failed to provide a loan modification,⁴ or (b) provided a loan modification, but the claimant believes the terms of the modification were not as favorable to the claimant as

4 As a regular part of the Debtors' business practices, the Debtors offered mortgage loan modifications to Borrowers in financial distress, pursuant to certain guidelines established by the investors ("Traditional Modifications"). The Home Affordable Modification Program ("HAMP") is an administrative program that was implemented in April 2009 by the United States Treasury Department to help eligible homeowners with loan modifications on their home mortgage debt. HAMP provided the Debtors with an additional type of loan modification (a "HAMP Modification") for assisting eligible Borrowers experiencing financial distress.

those to which claimant believed he or she was entitled. To assess the validity of these claims, the Liquidating Trust, in support of the Borrower Trust, reviewed the Debtors' books and records that were prepared and kept by the Debtors in the course of their regularly conducted business activities, to verify that the Debtors followed the applicable investor guidelines and policies regarding loan modifications. Specifically, the Borrower Trust reviewed Internal Servicing Notes, Loan Payment History, and, where applicable, loan modification agreements, loan modification applications, loan modification denial letters, loan modification approval letters, the claimant's compliance with modifications (trial and/or permanent) and any instructions or guidelines provided by the investor for the claimant's loan. See Objection at pp. 12-13.

Based on this review, the Loan Modification Claims are not valid liabilities of the Debtors because: (a) in cases where a loan modification request was denied, the Debtors complied with the applicable investor guidelines and policies governing the loan modification process and (b) in the cases where the claimant obtained a loan modification, the claimant was not damaged by the loan modification assistance provided.

9. If the No Liability Borrower Claims are not disallowed and expunged, the parties asserting such claims may potentially receive an improper distribution on account of the asserted liabilities to the detriment of other Borrower claimants.

10. Before filing this Objection, to the best of my knowledge, the Borrower Trust fully complied with all applicable provisions of the Borrower Claim Procedures set forth in the Procedures Order.

11. Accordingly, based upon this review, and for the reasons set forth in the Objection and Exhibit A to the Proposed Order, I have determined that each No Liability Borrower Claim that is the subject of the Objection should be accorded the proposed treatment described in the Objection.

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

Dated: November 10, 2014

/s/ Kathy Priore

Kathy Priore
Associate Counsel for The ResCap
Liquidating Trust

Exhibit 3

Rosenbaum Declaration

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

_____)	
In re:	)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
_____)	

**DECLARATION OF NORMAN S. ROSENBAUM IN SUPPORT OF
RESCAP BORROWER CLAIMS TRUST'S SEVENTY-SIXTH OMNIBUS
OBJECTION TO CLAIMS (NO LIABILITY BORROWER CLAIMS)**

Norman S. Rosenbaum, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury:

1. I am a partner in the law firm of Morrison & Foerster LLP ("M&F"). M&F maintains offices for the practice of law, among other locations in the United States and worldwide, at 250 West 55th Street, New York, NY 10019. I am an attorney duly admitted to practice before this Court and the courts of the State of New York. By this Court's Order entered on July 16, 2012, M&F was retained as counsel to Residential Capital, LLC and its affiliated debtors (the "Debtors"). Following the Effective Date,¹ M&F has been retained as counsel to the ResCap Borrower Claims Trust (the "Trust").

2. I submit this declaration in support of the Objection and in compliance with this Court's Order entered March 21, 2013, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1009, 3007 and 9019(b), approving (i) claim objection procedures; (ii) Borrower Claim procedures; (iii) settlement procedures; and (iv) schedule amendment procedures [Docket No. 3294] (the "Claim Objection Procedures Order").

¹ Unless otherwise indicated herein, capitalized terms shall have the meanings ascribed to them in the *ResCap Borrower Claims Trust's Seventy-Sixth Omnibus Objection to Claims (No Liability Borrower Claims)* (the "Objection")

3. It is my understanding that in connection with the filing of the Objection, prior to the Effective Date of the Plan, the Debtors complied with the Borrower Claim Procedures. I have been advised by M&F attorneys under my supervision that, prior to the Plan's Effective Date, in accordance with the Claims Objection Procedures Order, the Debtors first reviewed a preliminary Borrower Claim List (as such term is defined in the Procedures Order), and then determined if such claims contradicted the information in the Debtors' books and records. Thereafter, the Debtors identified those claimants who should receive a Request Letter.

4. To the best of my knowledge, the Debtors sent a Request Letter to those Borrowers that the Debtors and SilvermanAcampora LLP, Special Counsel to the Creditors' Committee, agreed should receive a Request Letter, with the Debtors providing copies of such letters to Special Counsel.

5. To the best of my knowledge, prior to the filing of the Objection, the Debtors and the Trust have fully complied with all other applicable terms of the Claim Objection Procedures Order.¹

I declare under penalty of perjury that the foregoing is true and correct.
Executed in New York, New York on November 10, 2014

/s/ Norman S. Rosenbaum
Norman S. Rosenbaum

¹ The Objection deviates from the Borrower Claim Procedures in that it is not supported by a declaration from Special Counsel. As of the Effective Date of the Plan, the Creditors' Committee was dissolved (see Plan at Art.XIII.D.). Because the Creditors' Committee was dissolved as of the Plan Effective Date (with the exception of certain limited duties provided for in the Plan), the Trust did not consult with Special Counsel prior to filing the Objection.

Exhibit 4

Request Letters



MORRISON | FOERSTER

June 21, 2013

Claim Number: XXX

Dear Claimant:

You are receiving this letter because you or someone on your behalf filed a Proof of Claim form in the jointly-administered chapter 11 bankruptcy cases of Residential Capital, LLC ("ResCap"), GMAC Mortgage, LLC and other affiliated debtors and debtors in possession (collectively, the "Debtors") pending before the United States Bankruptcy Court for the Southern District of New York, Case No. 12-12020 (MG) (the "ResCap bankruptcy case"), and we need additional information from you regarding the claim(s) ("claim") you are asserting against one or more of the Debtors.

The Information we Need From You Regarding Your Proof of Claim:

We reviewed a copy of the Proof of Claim form and documents, if any, that you filed in the ResCap bankruptcy case. A copy of your Proof of Claim form is enclosed for your reference. After reviewing the Proof of Claim form and any documents you submitted, we have determined that you did not provide sufficient information to support your "Basis for Claim" and we do not have sufficient information to understand the calculations you used to determine the amount you claim to be owed. In order to evaluate your claim, we need to understand the specific reasons as to why you believe you are owed money or are entitled to other relief from one or more of the Debtors. Please reply using the attached form and provide a written explanation, with supporting documentation, and include a detailed explanation of how you calculated the amount of your claim.

You Must Respond to this Letter by no Later Than July 22, 2013:

In accordance with the Order of the Bankruptcy Court (Docket No. 3294, filed March 21, 2013), you **must** respond to this letter by no later than July 22, 2013 with an explanation stating the legal and factual reasons why you believe you are owed money or are entitled to other relief from one or more of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases). You **must** provide copies of any and all documentation that you believe supports the basis for and amount of your claim. A form is included with this letter to assist you in responding to our request for additional information.

Consequences of Failing to Respond:

If you do not provide the requested information regarding the basis for and amount of your claim and the supporting documentation by July 22, 2013, the Debtors may file a formal objection to your Proof of Claim on one or more bases, including that you failed to provide sufficient information and documentation to support your claim. If the Debtors file such an objection and it is successful, your claim may be disallowed and permanently expunged. If your claim is disallowed and expunged, you will not receive any payment for your claim and any other requests you may have made for non-monetary relief in your Proof of Claim will be denied. Therefore, it is very important that you respond by the date stated above with the requested information and documentation supporting the basis for and amount of your claim.

For Those With a Mortgage Loan Originated or Serviced by One of the Debtors:

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the loan number and property address that the loan relates to in the information and any documentation that you send us, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Questions:

If you have any questions about this letter, or need help in providing the requested information and document(s), you should contact an attorney. You may also contact the Special Counsel to the Official Committee of Unsecured Creditors¹ with general questions (contact information provided below):

SPECIAL COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

SILVERMANACAMPORA LLP

100 Jericho Quadrangle, Suite 300

Jericho, New York 11753

Telephone: 866-259-5217

Website: <http://silvermanacampora.com>

E-mail address: rescapborrower@silvermanacampora.com

You must send the requested information and document(s) supporting your claim on or before the date provided in this letter to either;

- (i) Claims.Management@gmacrescap.com; or
- (ii) Residential Capital, LLC
P.O. Box 385220
Bloomington, Minnesota 55438

Please mark each document you send with the Claim Number referenced above.

Sincerely,

Claims Management
Residential Capital, LLC

¹ Please be advised that SilvermanAcampora LLP does not represent you individually and, therefore, cannot provide you with legal advice.



MORRISON | FOERSTER

July 21, 2013

Claim Number: XXX

Dear Claimant:

You are receiving this letter because you or someone on your behalf filed a Proof of Claim form in the jointly-administered chapter 11 bankruptcy cases of Residential Capital, LLC ("ResCap"), GMAC Mortgage, LLC and other affiliated debtors and debtors in possession (collectively, the "Debtors") pending before the United States Bankruptcy Court for the Southern District of New York, Case No. 12-12020 (MG) (the "ResCap bankruptcy case"), and we need additional information from you regarding the claim(s) ("claim") you are asserting against one or more of the Debtors.

The Information we Need From You Regarding Your Proof of Claim:

We reviewed a copy of the Proof of Claim form and documents, if any, that you filed in the ResCap bankruptcy case. A copy of your Proof of Claim form is enclosed for your reference. After reviewing the Proof of Claim form and any documents you submitted, we have determined that you did not provide sufficient information regarding the claim amount. In order to evaluate your claim, we need you to reply using the attached form and provide a specific explanation of how you calculated the amount of your claim and also provide sufficient documentation to support the amount you have claimed.

You Must Respond to this Letter by no Later Than July 22, 2013:

In accordance with the Order of the Bankruptcy Court (Docket No. 3294, filed March 21, 2013), you **must** respond to this letter by no later than July 22, 2013 with an explanation stating the legal and factual reasons why you believe you are owed money or are entitled to other relief from one or more of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases). You **must** provide copies of any and all documentation that you believe supports the basis for and amount of your claim. A form is included with this letter to assist you in responding to our request.

Consequences of Failing to Respond:

If you do not provide the requested information regarding the basis for and amount of your claim and the supporting documentation by July 22, 2013, the Debtors may file a formal objection to your Proof of Claim on one or more bases, including that you failed to provide sufficient information and documentation to support your claim. If the Debtors file such an objection and it is successful, your claim may be disallowed and permanently expunged. If your claim is disallowed and expunged, you will not receive any payment for your claim and any other requests you may have made for non-monetary relief in your Proof of Claim will be denied. Therefore, it is very important that you respond by the date stated above with the requested information and documentation supporting the basis for and amount of your claim.

For Those With a Mortgage Loan Originated or Serviced by One of the Debtors:

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the loan number and property address that the loan relates to in the information and any documentation that you send us, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Questions:

If you have any questions about this letter, or need help in providing the requested information and document(s), you should contact an attorney. You may also contact the Special Counsel to the Official Committee of Unsecured Creditors¹ with general questions (contact information provided below):

SPECIAL COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

SILVERMANACAMPORA LLP

100 Jericho Quadrangle, Suite 300

Jericho, New York 11753

Telephone: 866-259-5217

Website: <http://silvermanacampora.com>

E-mail address: rescapborrower@silvermanacampora.com

You must send the requested information and document(s) supporting your claim on or before the date provided in this letter to either;

- (i) Claims.Management@gmacrescap.com; or
- (ii) Residential Capital, LLC
P.O. Box 385220
Bloomington, Minnesota 55438

Please mark each document you send with the Claim Number referenced above.

Sincerely,

Claims Management
Residential Capital, LLC

¹ Please be advised that SilvermanAcampora LLP does not represent you individually and, therefore, cannot provide you with legal advice.



MORRISON | FOERSTER

June 21, 2013

Claim Number: XXX

Dear Claimant:

You are receiving this letter because you or someone on your behalf filed a Proof of Claim form in the jointly-administered chapter 11 bankruptcy cases of Residential Capital, LLC ("ResCap"), GMAC Mortgage, LLC and other affiliated debtors and debtors in possession (collectively, the "Debtors") pending before the United States Bankruptcy Court for the Southern District of New York, Case No. 12-12020 (MG) (the "ResCap bankruptcy case"), and we need additional information from you regarding the claim(s) ("claim") you are asserting against the Debtors.

The Information we Need From You Regarding Your Proof of Claim:

We reviewed a copy of the Proof of Claim form and documents that you filed in the ResCap bankruptcy case. A copy of your Proof of Claim form is enclosed for your reference. According to our records, you have filed a lawsuit against one or more of the Debtors. Please reply using the attached form and let us know whether the basis for and amount of the claim contained in the Proof of Claim form are the same or different in any way from the claim you have asserted in your lawsuit against the Debtors. Please ensure that you provide specific detail and support as to the basis for and amount of claim referenced in your Proof of Claim. If your lawsuit has been dismissed or withdrawn, please provide a specific explanation as to why you believe that you are still owed money or entitled to other relief from one or more of the Debtors.

You Must Respond to this Letter by no Later Than July 22, 2013:

In accordance with the Order of the Bankruptcy Court (Docket No. 3294, filed March 21, 2013), you **must** respond to this letter by no later than July 22, 2013 with the requested information and an explanation stating the legal and factual reasons why you believe you are owed money or are entitled to other relief from one or more of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases). You **must** also provide copies of any and all documentation that you believe supports the basis for and amount of your claim. A form is included with this letter to assist you in responding to our request for additional information.

Consequences of Failing to Respond:

If you do not provide the requested information regarding the basis for and amount of your claim and the supporting documentation by July 22, 2013, the Debtors may file a formal objection to your Proof of Claim on one or more bases, including that you failed to provide sufficient information and documentation to support your claim. If the Debtors file such an objection and it is successful, your claim may be disallowed and permanently expunged. If your claim is disallowed and expunged, you will not receive any payment for your claim and any other requests you may have made for non-monetary relief in your Proof of Claim will be denied. Therefore, it is very important that you respond by the date stated above with the requested information and documentation supporting the basis for and amount of your claim.

For Those With a Mortgage Loan Originated or Serviced by One of the Debtors:

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the loan number and property address that the loan relates to in the information and any documentation that you send us, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Questions:

If you have any questions about this letter, or need help in providing the requested information and document(s), you should contact an attorney. You may also contact the Special Counsel to the Official Committee of Unsecured Creditors¹ with general questions (contact information provided below):

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Jericho, New York 11753

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Website: <http://silvermanacampora.com>

E-mail address: rescapborrower@silvermanacampora.com

You must send the requested information and document(s) supporting your claim on or before the date provided in this letter to either;

- (i) Claims.Management@gmacrescap.com; or
- (ii) Residential Capital, LLC
P.O. Box 385220
Bloomington, Minnesota 55438

Please mark each document you send with the Claim Number referenced above.

Sincerely,

Claims Management
Residential Capital, LLC

¹ Please be advised that SilvermanAcampora LLP does not represent you individually and, therefore, cannot provide you with legal advice.



MORRISON | FOERSTER

Claim Number: XXXX

Dear Claimant:

You are receiving this letter because you or someone on your behalf filed a Proof of Claim form in the jointly-administered chapter 11 bankruptcy cases of Residential Capital, LLC ("ResCap"), GMAC Mortgage, LLC, and other affiliated debtors and debtors in possession (collectively, the "Debtors"), pending before the United States Bankruptcy Court for the Southern District of New York, Case No. 12-12020 (MG) (the "ResCap bankruptcy case") and we need additional information from you regarding the claim(s) you are asserting against the Debtors.

The Information we Need From You Regarding Your Proof of Claim:

We received and reviewed a copy of the Proof of Claim form filed on your behalf, and noticed that it did not have any supporting documents attached to it. In order to evaluate your claim, we need to specifically understand why you believe you are owed money or are entitled to other relief from one or more of the Debtors. Although you may have stated the factual or legal basis for your claim on the first page of the Proof of Claim form, you have not provided any documentation to support this claim. Therefore, we need you to provide us with documents that support the basis for your asserted claim. A copy of your Proof of Claim form is enclosed for your reference.

You Must Respond to this Letter by no Later Than June 24, 2013:

In accordance with the Order of the Bankruptcy Court (Docket No. 3294, filed March 21, 2013), you **must** respond to this letter by no later than June 24, 2013 with an explanation that states the legal and factual reasons why you believe you are owed money or are entitled to other relief from one or more of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases), and you **must** provide copies of any and all documentation that you believe supports the basis for your claim. Included with this letter is a form to assist you in responding to our request.

Consequences of Failing to Respond:

If you do not provide the supporting documentation by June 24, 2013, the Debtors may file a formal objection to your Proof of Claim on one or more bases, including the basis that you failed to provide sufficient information and documentation to support your claim, and your claim may be disallowed and permanently expunged. If your claim is disallowed and expunged, you will not receive any payment for your claim and any other requests you may have made for non-monetary relief in your Proof of Claim will be denied. Therefore, it is very important that you respond by the date stated above with the requested information and documentation supporting the basis for your claim.

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the loan number and property address that the loan relates to in the information and documentation that you send us, so that we can effectively search our records for information on your property and loan, and evaluate your claim(s).

Questions:

If you have any questions about this letter, or need help in providing the requested information and document(s), you should contact an attorney. You may also contact the Special Counsel to the Official Committee of Unsecured Creditors¹ with questions (contact information provided below):

SPECIAL COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

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Jericho, New York 11753

Telephone: 866-259-5217

Website: <http://silvermanacampora.com>

E-mail address: rescapborrower@silvermanacampora.com

You must send the requested information and document(s) supporting your claim(s) on or before the date provided in this letter to either:

- (i) **Claims.Management@gmacrescap.com; or**
- (ii) **Residential Capital, LLC
P.O. Box 385220
Bloomington, Minnesota 55438**

Please mark each piece of correspondence with the Claim Number referenced above.

Sincerely,

Claims Management
Residential Capital, LLC

¹ Please be advised that SilvermanAcampora LLP does not represent you individually, and therefore, cannot provide you with legal advice.



MORRISON | FOERSTER

Claim Number:

Dear Claimant:

You are receiving this letter because you or someone on your behalf filed a Proof of Claim form in the jointly-administered chapter 11 bankruptcy cases of Residential Capital, LLC ("ResCap"), GMAC Mortgage, LLC and other affiliated debtors and debtors in possession (collectively, the "Debtors") pending before the United States Bankruptcy Court for the Southern District of New York, Case No. 12-12020 (MG) (the "ResCap bankruptcy case") and we need additional information from you regarding the claims you are asserting against the Debtors.

The Information we Need From You Regarding Your Proof of Claim:

We received and reviewed a copy of the Proof of Claim form and document(s), if any, that you filed in the ResCap bankruptcy case. A copy of your Proof of Claim form is enclosed for your reference. In the process of reviewing the Proof of Claim form and the document(s), if any, you submitted, we noticed that you left the "Basis for Claim" field on the Proof of Claim form blank, or indicated that the basis for your claim is "unknown". In order to evaluate your claim, we need to understand why you believe you are owed money or are entitled to other relief from one of the Debtors.

You Must Respond to this Letter by no Later Than June 17, 2013:

In accordance with the Order of the Bankruptcy Court (Docket No. 3294, filed March 21, 2013), you **must** respond to this letter by no later than June 17, 2013 with an explanation that states the legal and factual reasons why you believe you are owed money or are entitled to other relief from one of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases) and, you **must** provide copies of any and all documentation that you believe supports the basis for your claim. Included with this letter is a form to assist you in responding to our request.

Consequences of Failing to Respond:

If you do not provide the basis for your claim and the supporting documentation by June 17, 2013, the Debtors may file a formal objection to your Proof of Claim on, among others, the basis that you failed to provide sufficient information and documentation to support your claim, and your claim may be disallowed and permanently expunged. If your claim is disallowed and expunged, you will not receive any payment for your claim and any other requests you may have made for non-monetary relief in your Proof of Claim will be denied. Therefore, it is very important that you respond by the date stated above with the requested information and documentation supporting the basis for your claim.

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the loan number and property address that the loan relates to in the information and documentation that you send us, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Questions:

If you have any questions about this letter, or need help in providing the requested information and document(s), you should contact an attorney. You may also contact the Special Counsel to the Official Committee of Unsecured Creditors¹ (contact information provided below):

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You must send the requested information and document(s) supporting your claim on or before the date provided in this letter to either;

- (i) Claims.Management@gmacrescap.com, or
- (ii) Residential Capital, LLC
P.O. Box 385220
Bloomington, Minnesota 55438

Please mark each piece of correspondence with the Claim Number referenced above.

Sincerely,

Claims Management
Residential Capital, LLC

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Exhibit 5

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

2014 FEB 18 PM 1:21
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

CARLOSE LOPEZ

Plaintiff

v.

GMAC MORTGAGE, LLC et al

Defendants

CIVIL ACTION NO.

5:12-cv-00251-JRN

BY

KLC
DEPUTY

ORDER

Before the Court is Defendants' Motion for Summary Judgment, (Dkt. No. 25); Plaintiff's Response, (Dkt. No. 30); and Defendants' Reply to Plaintiff's Response. (Dkt. No. 31). For reasons set out below, the Court grants Defendants' Motion for Summary Judgment.

I. OVERVIEW

On October 1, 2002, Plaintiff executed a Promissory Note ("Note") in the original principle amount of \$82,000.00, payable to GMAC Mortgage Corporation. Concurrent with the execution of the Note, Plaintiff executed a Deed of Trust, granting a lien on the property at 10907 Mount Boracho Drive, San Antonio, Texas 78213 (the "Property").

Effective February 15, 2013, Ocwen Loan Servicing, LLC ("Ocwen") purchased the servicing rights of Rescap LLC, which included certain assets of GMAC, including Plaintiff's loan. Ocwen, as the successor servicer of the loan, possesses the original Note; however, prior to February 15, 2013, GMAC possessed the original Note. (Maxwell Aff., ¶

10). Plaintiff defaulted on the Note by failing to make payments pursuant to the terms of the Note and Deed of Trust. (Maxwell Aff., ¶ 11). Plaintiff has not made a payment pursuant to the terms of the Note and Deed of Trust since January 2010 and, as of June 30, 2013, Plaintiff owes \$39,407.27.

In April of 2010, Plaintiff applied for a loan modification, but GMAC declined to modify his loan. (Maxwell Aff., ¶ 13). Eventually, in November of 2010, GMAC commenced foreclosure proceedings and scheduled a Trustee's sale of the Property for that same month.

In the instant lawsuit, Plaintiff is suing Defendant for breach of contract, negligent misrepresentation, unlawful debt collection, constructive fraud, violation of the Federal Consumer Credit Protection Act, breach of fiduciary duty, trespass to try title, and wrongful foreclosure. None of Plaintiff's claims withstand scrutiny.

II. STANDARD OF REVIEW

The court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. See FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986); *Washburn v. Harvey*, 504 F.3d 505, 508 (5th Cir. 2007). A dispute regarding a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When ruling on a motion for summary judgment, the court is required to view all inferences drawn from the factual record in the light

most favorable to the nonmoving party. See *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986); *Washburn*, 504 F.3d at 508.

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party's case, the party opposing the motion must come forward with competent summary-judgment evidence of the existence of a genuine fact issue. *Matsushita*, 475 U.S. at 586. Mere conclusory allegations are not competent summary-judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary-judgment evidence. *Id.* The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006). Rule 56 does not impose a duty on the court to "sift through the record in search of evidence" to support the nonmovant's opposition to the motion for summary judgment. *Id.* "Only disputes over facts that might affect the outcome of the suit under the governing laws will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. Disputed fact issues which are "irrelevant and unnecessary" will not be considered by a court in ruling on a summary judgment motion. *Id.* If the nonmoving party fails to make a showing sufficient to establish

the existence of an element essential to its case and on which it will bear the burden of proof at trial, summary judgment must be granted. *Celotex*, 477 U.S. at 322-23.

III. DISCUSSION

A. Defendants are entitled to summary judgment on Plaintiff's "Show Me the Note Claims."

Plaintiff's complaint is not a model of clarity, but the Court agrees with Defendant that many of Plaintiff's complaints are built upon a so called "show me the note" theory. (See Am. Compl., ¶ 17). Texas courts have "roundly rejected this theory and dismissed the claims because foreclosure statutes simply do not require possession or production of the original note." *Martins v. BAC Home Loans Servicing, LP*, 2013 WL 1777487, at *2 (5th Cir. April 26, 2013) (quoting *Wells v. BAC Home Loans Servicing, L.P.*, 2011 WL 2163987, at *2 (W.D. Tex. April 26, 2011)). Accordingly, to the extent that Plaintiff's claims rely upon the "show me the note" legal theory, the claims are not supported by a cognizable legal theory, and Defendants are due summary judgment.

B. Defendants are entitled to summary judgment on all of Plaintiff's TARP/HAMP claims.

Plaintiff attempts to bring claims under TARP, HAMP, and other federal programs. Plaintiff's claims under TARP fail since the program does not provide a private right of action to individual borrowers against lenders. See 12 U.S.C. § 5229. See also *Thomas v. Pentagon Federal Credit Union*, 393 Fed. Appx. 635, 638 (11th Cir. 2010) ("[TARP] provides

for judicial review of the Secretary's decision, but does not mention a private right of action against private entities. Thus, it appears that Congress did not intend to allow such actions under § 5211.”); *Regions Bank v. Homes by Williamscoft, Inc.*, 2009 WL 3753585 (N.D. Ga. Nov. 16, 2009); *Gonzalez v. First Franklin Loan Services*, 2010 WL 144862 (E.D. Cal. Jan. 11, 2010); *Santos v. Countrywide Home Loans*, 2009 WL 3756337 (E.D. Cal. Nov. 6, 2009); *Pantoja v. Countrywide Home Loans, Inc.*, 640 F. Supp. 2d 1177, 1185 (N.D. Cal. 2009).

Along the same lines, neither HAMP nor any of the other programs created under the umbrella of the Homeowners Affordability and Stability Plan creates a private right of action. See *Pennington v. HSBC Bank USA, Nat. Ass'n*, 2011 WL 6739609, at *5 (W.D. Tex. Dec. 22, 2011); *Cruz v. CitiMortgage, Inc.*, 2012 WL 1836095, at * 6 (N.D. Tex. May 21, 2012) (“The vast majority of courts that have addressed similar claims by plaintiffs asserting entitlement to a permanent HAMP modification, based on a variety of different legal theories, have universally rejected these claims on the ground that HAMP does not create a private right of action for borrowers against lenders and servicers.”); *Easley v. Federal Nat. Mortg. Ass'n*, 2011 WL 6002644, at * 5 (S.D. Tex. Nov. 30, 2011); *Alsobrook v. GMAC Mortg., LLC*, 2012 WL 1643220, at *6 (N.D. Tex. April 13, 2012); *Cade v. BAC HomeLoans Serv., LP*, 2011 WL 2470733, at *2 (S.D. Tex. June 20, 2011). Thus all of Plaintiff's claims relating to these programs fail as a matter of law.

C. Defendants are entitled to summary judgment on Plaintiff's breach of contract claims.

Plaintiff's breach of contract claim fails as a matter of law since Plaintiff's Amended Complaint fails to state all the elements of a breach of contract cause of action. Under Texas law, the "essential elements of a breach of contract claim are: (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of contract by the defendant; and (4) damages sustained as a result of the breach." *Simien v. Unifund CCR Partners*, 321 S.W.3d 235, 247 (Tex. App.—Houston [1st Dist.] 2010); *see also* *Watson v. Citimortgage, Inc.*, 814 F.Supp.2d 726, 732 (E.D. Tex. 2011). Also, "in order to properly plead a claim based on breach of the Note and Deed of Trust, the Plaintiff must point to a specific provision in the contract that was breached by the Defendants." *Milton v. U.S. Bank Nat. Ass'n*, No. 4:10-CV-538, 2012 WL 1969935, at *2 (E.D. Tex. May 31, 2012).

Here, Plaintiff fails to point to any provision of the Note or Deed of Trust that was breached. Moreover, Plaintiff first breached the contract by defaulting on the terms of the Note and Deed of Trust. (Maxwell Aff., ¶ 11). Thus, Plaintiffs did not perform under the contract and are barred as a matter of law from pursuing a breach of contract claim. *Carr v. Norstok Bldg. Sys.*, 767 S.W.2d 936, 939 (Tex. App.—Beaumont 1989, no writ).

Even if Plaintiff had properly pleaded its breach of contract claim, the Court would still dismiss the claim since Plaintiff's claim is barred by the statute of frauds. The Texas statute of frauds states that "[a] loan agreement in which the amount involved exceeds

\$50,000 in value is not enforceable unless the agreement is in writing and signed by the party to be bound or by that party's authorized representative." TEX. BUS. & COM. CODE § 26.02(b). Further, "[t]he rights and obligations of the parties to [a loan] agreement shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement." *Id.* at § 26.02(c). A loan agreement "may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement." *Id.* at § 26.02(d). All of this means that, §26.02 bars any claim of breach of contract based on oral representations that conflict with the written terms of the contract. See *Foster*, 2002 WL 31730405, at *3.

Plaintiff's Amended Complaint posits that Defendants made and failed to satisfy oral promises that differed from the written terms of the loan. (Am. Compl., at ¶ 18-19). Since an enforceable, written contract exists between the parties in this case, the statute of frauds prohibits Plaintiff from now alleging that Defendants failed to comply with oral representations that allegedly varied with the terms of the written contract. See *Foster*, 2002 WL 31730405 at *3.

Plaintiff's Amended Complaint does not otherwise demonstrate any breach by Defendants. While Plaintiff complains that GMAC refused payment, the Deed of Trust expressly stated that Defendants "may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current." (Dkt No. 25, Ex. A2, Deed of Trust, at ¶ 1). Given that Plaintiff freely admits that he "fell behind on his

house payment” before his payments were refused, Defendant was clearly within its rights when it rejected Plaintiff’s payment. (Am. Compl., ¶ 13; Dkt No 25, Exs. A-8 & A-9).

In sum, Plaintiff fails to argue that Defendant took any action in violation of the terms of the agreement that Plaintiff struck with Defendant. Accordingly, the Court is obligated to dismiss this claim.

D. Defendants are entitled to summary judgment on Plaintiff’s negligent misrepresentation and fraud claims.

Plaintiff’s negligent misrepresentation and fraud claims fails since Plaintiff, again, has not and cannot state all of the elements of either cause of action. “The elements of fraud in Texas are (1) the defendant made a representation to the plaintiff; (2) the representation was material; (3) the representation was false; (4) when the defendant made the representation the defendant knew it was false or made the representation recklessly and without knowledge of its truth; (5) the defendant made the representation with the intent that the plaintiff act on it; (6) the plaintiff relied on the representation; and (7) the representation caused the plaintiff injury.” *Shandong Yinguang Chemical Industries Joint Stock Co., Ltd. v. Potter*, 607 F.3d 1029, 1032-33 (5th Cir. 2010).

Likewise, the elements of a negligent misrepresentation claim are: “(1) a defendant, in the course of its business or in a transaction in which it had a pecuniary interest, made a representation; (2) the defendant supplied false information for the guidance of another in the other’s business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffered pecuniary loss

by justifiably relying on the representation.” *Martin K. Eby Constr. Co. v. LAN/STV*, 350 S.W.3d 675, 688 (Tex. App.-Dallas 2011, pet. filed). “[P]romises of future action are not actionable as a negligent misrepresentation tort” under Texas law. *Custer v. Wells Fargo Bank, N.A.*, 2013 WL 1926412, at *13 (W.D. Tex. April 1, 2013) (quoting *De Franceschi v. BAC Home Loans Servicing, L.P.*, 477 F. App’x 200, 204–05 (5th Cir. 2012)).

All of alleged misrepresentations that Plaintiff raises in its complaint relate to future actions and, accordingly, are not actionable. (See Am. Compl., ¶¶ 16, 18). Additionally, Plaintiff fails to allege that he suffered pecuniary loss by relying on any alleged misrepresentations, a required element of a valid fraud or negligent misrepresentation claim. Accordingly, the Court grants summary judgment in favor of Defendants on Plaintiff’s fraud and negligent misrepresentation claims.

E. Defendants are entitled summary judgment on Plaintiff’s unlawful debt collection claims.

Assuming Plaintiff intends to allege a claim for a breach of common law tort of unreasonable collection efforts, the allegations in the Amended Complaint fall short of the required standard of conduct as a matter of law. As has been made clear by the Fifth Circuit, the standard for claims of unreasonable collection efforts under Texas law requires a showing of “a course of harassment that was willful, wanton, malicious, and intended to inflict mental anguish and bodily harm.” *Water Dynamics, Ltd. v. HSBC Bank USA, Nat. Ass’n*, 2013 WL 363118, 2 (5th Cir. 2013) (citing *EMC Mortg. Corp. v. Jones*, 252 S.W.3d 857, 868 (Tex. App.-Dallas 2008). While “[u]nreasonable collection efforts is a Texas

common-law intentional tort that lacks clearly defined elements,” the reasonableness of conduct is judged on a case-by-case basis. *B.F. Jackson, Inc. v. Costar Realty Info., Inc.*, 2009 WL 1812922, at *5 (S.D. Tex. 2009) (citing *Woodrum v. Bradley*, 1990 WL 151264, at *4 (Tex.App.-Houston [14th Dist.] 1990, writ denied). Generally, “mental anguish damages alone will not establish a right of recovery; the plaintiff must suffer some physical or other actual damages in order to be entitled to relief.” *Id.*

Plaintiff's Amended Complaint is devoid of any evidence suggesting that Defendants engaged in "a course of harassment that was willful, wanton, malicious, and intended to inflict mental anguish and bodily harm." Instead, Plaintiff only alleges that Defendants made "misrepresentations that his request for home loan modification would be considered." (Am. Compl., ¶ 16). The summary judgment evidence, however, demonstrates that Plaintiff's request was reviewed and ultimately denied. (See Dkt. No. 25, Ex. A-3 - A-7). There is no evidence that would create a fact issue as to Plaintiff's claim of unreasonable collection efforts. Moreover, Plaintiff failed to allege that he suffered "some physical or other actual damages." Accordingly, Plaintiff's unreasonable collection efforts claim fails as a matter of law. *Franklin v. PNC Bank Nat'l Assn.*, 2013 WL 1856004, at *5 (E.D. Tex. May 1, 2013; *Bacon v. U.S. Bank N.A.*, 2013 WL 4506532, at *6 (E.D. Tex. Aug. 31, 2012).

Plaintiff's Texas Deceptive Trade Practices Act ("DTPA") claims fare no better than those already addressed by the Court in this Order. Sections 392.301 and 392.302 of the DTPA both deal with threatening, coercive, and harassing debt collection, while § 392.304

prohibits certain fraudulent representations. To state a plausible claim for relief under the DTPA, Plaintiff must allege facts showing that a violation of the statute occurred and that he was actually injured. Plaintiff must also allege facts establishing a causal link between the conduct constituting the violation and the alleged injury. See TEX. FIN. CODE § 392.403(a)(2). Moreover, when requesting damages due to a DTPA violation, Plaintiff must show that his damages were “sustained as a result of a violation of [the DTPA].” TEX. FIN. CODE § 392.403(a)(2).

Plaintiff does not cite the particular sub-section of the DTPA that was allegedly violated, nor provide any allegations in support of this claim. (See Am. Compl., ¶ 28(g)). Moreover, Plaintiff’s Amended Complaint does not include *any factual* allegations that would, if buttressed by evidence, support a claim under § 392.301, 392.302, or 392.304 of the DTPA. Accordingly, Defendants are entitled to summary judgment on Plaintiff’s DTPA claims.

F. Defendants are entitled to summary judgment on Plaintiff’s Consumer Credit Protection Act Claim.

In its complaint, Plaintiff fails to identify the specific provision of the Consumer Credit Protection Act which was allegedly violated. Instead, Plaintiff simply cites to 15 U.S.C. § 1600 *et seq.*, legislation which spans seven chapters. In any case, none of the allegations included in the Amended Complaint support a claim for a violation of the Act. Moreover, there is no evidence that any such violation occurred. Therefore, Defendants are due summary judgment on Plaintiff’s Consumer Credit Protection Act claim.

G. Defendants did not owe Plaintiff any fiduciary duty.

Plaintiff alleges that Defendants violated a fiduciary duty, but this claim fails since Defendants did not owe Plaintiff any fiduciary duty. "The duty of good faith and fair dealing only exists in Texas where express language in a contract creates the duty or where a special relationship of trust exists between the parties." *Graves v. Deutsche Bk. Nat. Trust Co.*, 2011 WL 2119189, at *3 (N.D. Tex. May 27, 2011). It is well established under Texas law that, ordinarily, there is no special relationship between a mortgagor and mortgagee. See *Federal Deposit Ins. Corp. v. Coleman*, 795 S.W.2d 706 (Tex. 1990). "Absent a 'special relationship,' any duty to act in good faith is contractual in nature and its breach does not amount to an independent tort." *Adams*, 2011 WL 5080217, at *7 (internal quotations omitted).

Plaintiff's complaint does not identify any special relationship that existed between Plaintiff and Defendant. On the contrary, the evidence establishes that the only relationship that existed between the parties in this case was that of mortgagor and mortgagee. That being the case, there is no genuine issue of material fact as to the nature of the duties that Defendants owed Plaintiff and Defendants are entitled to summary judgment on this claim.

H. Defendants are entitled to summary judgment on Plaintiff's trespass to try title claim.

Plaintiff's Complaint fails to state all of the required elements of a trespass to try title claim. "To prevail in a trespass-to-try-title action, Plaintiff must usually (1) prove a

regular chain of conveyances from the sovereign, (2) establish superior title out of a common source, (3) prove title by limitations, or (4) prove title by prior possession coupled with proof that possession was not abandoned.” *Martin v. Amerman*, 133 S.W.3d 262, 265 (Tex. 2004) (citation omitted). “The pleading rules are detailed and formal, and require a plaintiff to prevail on the superiority of his title, not on the weakness of a defendant's title.” *Id.* (citation omitted). A trespass to try title suit is used to clear problems in the chain of title or recover possession of wrongfully-withheld land. See Tex. Prop. Code Ann. § 22.001 (Vernon 2000). Under Texas Rules of Civil Procedure 784, “the defendant in [a trespass to try title] action shall be the person in possession if the premises are occupied.” Tex. R. Civ. P. 784

Plaintiff's trespass to try title claim appears to be based on his theory that Defendants are not entitled to foreclose, which is refuted by the terms of the agreement between the parties. As discussed earlier, this is simply incorrect. Moreover, since Plaintiff remains in possession of the property at issue in this case, Plaintiff's trespass to try title claim is precluded by Rule 784's requirement that the defendant be in possession of the premises at issue.

I. Plaintiff has not and cannot establish the elements of a valid wrongful foreclosure cause of action.

In Texas, to state a claim for wrongful foreclosure, a plaintiff must set forth facts showing: “(1) a defect in the foreclosure sale proceedings; (2) a grossly inadequate selling price; and (3) a causal connection between the defect and the grossly inadequate selling

price.” *Sauceda v. GMAC Mortgage Corp.*, 268 S.W.3d 135, 139 (Tex. App.—Corpus Christi 2008). Thus, a completed foreclosure sale is a pre-requisite to a claim of wrongful foreclosure. *See Ayers v. Aurora Loan Servs. LLC*, 787 F.Supp.2d 451, 454 (E.D. Tex. 2011). Texas law does not recognize a cause of action for attempted wrongful foreclosure. *See Port City State Bank v. Leyco Constr. Co.*, 561 S.W.2d 546, 547 (Tex. Civ. App.—Beaumont 1977, no writ). Applying Texas law, Texas federal district courts have consistently held that attempted wrongful foreclosure claims like the one asserted here are not cognizable. *See, e.g., Ramming v. JPMorgan Chase Bank, N.A.*, No. H-10-5011, 2012 WL 1122791, at *3 n.3 (S.D. Tex. Apr. 3, 2012); *Thomas v. EMC Mortg. Corp.*, No. 4:10-CV-861-A, 2011 WL 5880988, at *6 (N.D. Tex. Nov. 23, 2011).

The Court has already dispensed with Plaintiff's central argument—that Defendants lacked the contractual right to foreclose. Obviously, this fact is fatal to Plaintiff's wrongful foreclosure claim. Moreover, while Defendants did move to commence foreclosure proceedings at one point, Defendants' attempted foreclosure was abated when Plaintiff filed this action, so there has not *been any foreclosure* in this case. A foreclosure that has not occurred cannot be wrongful, and Defendants are therefore entitled to summary judgment on Plaintiff's wrongful foreclosure claim.

J. Plaintiff is not entitled to any equitable remedy from this Court.

In the Amended Complaint, Plaintiff requests reformation, specific performance, and declaratory judgment from the Court. Plaintiff is not entitled to any of these remedies. First, Plaintiff is not entitled to a reformation of the contract since the Amended

Complaint does not demonstrate or even allege a mutual mistake, a required element of reformation. See *Kiggundu v. Mortgage Electronic Registration Systems, Inc.*, 2011 WL 2606359, at * 7-8 (S.D. Tex. June 30, 2011).

Along the same lines, Plaintiff is not entitled to specific performance since Plaintiff fails to demonstrate the required elements to entitle him to specific performance. “In Texas, ‘[s]pecific performance is an equitable remedy that may be awarded upon a showing of breach of contract.’” *Geske v. Wells Fargo Bank, Nat. Ass’n*, 2012 WL 1231835, at *5 (N.D. Tex. April 12, 2012) (quoting *Stafford v. Southern Vanity Magazine, Inc.*, 231 S.W.3d 530, 535 (Tex. App.— Dallas 2007, pet. denied)). “In addition to the elements for breach of contract, the party seeking specific performance must also establish that there is no adequate remedy at law to compensate it for its loss.” *Geske*, 2012 WL 1231835, at *5 (citing *South Plains Switching, Ltd. v. BNSF Ry. Co.*, 255 S.W.3d 690, 703 (Tex. App.— Amarillo 2008, pet. denied)). Here, Plaintiff failed established a breach of contract, and has not alleged that there no adequate remedy at law to compensate him for his loss. Accordingly, Plaintiff is not entitled to specific performance. See *Mitchell v. Chase Home Finance LLC*, 2008 WL 623395, at *6 (N.D. Tex. March 4, 2008).

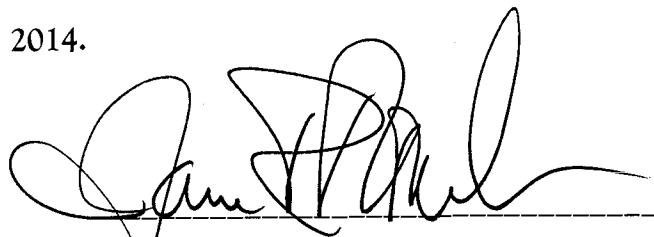
Finally, Plaintiff is not entitled to a declaratory judgment since Plaintiff has not demonstrated the existence of an actual controversy. The Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, does not create a substantive cause of action. See *Lowe v. Ingalls Shipbuilding, A Div. of Litton Sys., Inc.*, 723 F.2d 1173, 1179 (5th Cir. 1984). Instead, a declaratory judgment action allows “an early adjudication of an actual controversy”

arising under other substantive law. *Collin Cnty., Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods, (HAVEN)*, 915 F.2d 167, 170 (5th Cir. 1990). Since Plaintiff has failed to prove the existence of an actual controversy, Plaintiff's declaratory action fails.

IV. CONCLUSION

For reasons set out above, the Court GRANTS Defendants' Motion for Summary Judgment. (Dkt. No. 25).

SIGNED this 18th day of February, 2014.

A handwritten signature in black ink, appearing to read "James R. Nowlin", written over a horizontal line.

JAMES R. NOWLIN
UNITED STATES DISTRICT JUDGE

Exhibit 6-1

FILED

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2014 JUL 17 PM 3: 09

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THIRD CIRCUIT COURT
STATE OF HAWAII

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

ANGELO M. MARIANI, JR.,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3, LOAN# 7440787091 on real property located at 64-5339 Puu Nani Drive, Kamuela, Hawaii 96743 TMK (3) 6-4-023-036-0000, DOE Defendants 1-100,

Defendants.

CIVIL NO. 09-1-339K (EAS)
(Foreclosure) (Kona)

ORDER GRANTING: (1) DEFENDANT THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF ANGELO M. MARIANI, JR.'S COMPLAINT FILED ON SEPTEMBER 17, 2009; (2) COMPLAINANT-INTERVENOR RESIDENTIAL FUNDING COMPANY, LLC'S MOTION FOR SUMMARY JUDGMENT ON ITS COMPLAINT IN

I hereby certify that this is a full, true and correct
copy of the original on file in this office.

L. Mock Chew

RESIDENTIAL FUNDING COMPANY,
LLC,

Complainant-Intervenor,

v.

ANGELO M. MARIANI, JR.; and DOE
Defendants 1-100,

Defendant.

ANGELO M. MARIANI, JR.,

Counter/Cross-Complainant,

v.

RESIDENTIAL FUNDING COMPANY,
LLC; AND THE BANK OF NEW YORK
MELLON TRUST COMPANY, NATIONAL
ASSOCIATION FKA THE BANK OF NEW
YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JP MORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2006RS3, LOAN# 7440787091 on real
property located at 64-5339 Puu Nani Drive,
Kamuela, Hawaii 96743 TMK (3) 6-4-023-
036-0000,

Counter/Cross-Defendants.

**INTERVENTION FOR EJECTMENT;
AND (3) COUNTER/CROSS-
DEFENDANTS THE BANK OF NEW
YORK MELLON TRUST COMPANY,
NATIONAL ASSOCIATION FKA THE
BANK OF NEW YORK TRUST
COMPANY, N.A. AS SUCCESSOR TO JP
MORGAN CHASE BANK N.A. AS
TRUSTEE FOR RAMP 2006RS3'S AND
RESIDENTIAL FUNDING COMPANY,
LLC'S MOTION FOR SUMMARY
JUDGMENT AS TO COUNTER/CROSS-
COMPLAINANT ANGELO M.
MARIANI, JR.'S COUNTER-CLAIM
AND CROSS-CLAIM FILED ON
MARCH 19, 2012**

HEARING:

Date: June 16, 2014

Time: 1:00 p.m.

Judge: Hon. Elizabeth A. Stance

**ORDER GRANTING: (1) DEFENDANT THE BANK OF NEW YORK MELLON TRUST
COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST
COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE
FOR RAMP 2006RS3'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF
ANGELO M. MARIANI, JR.'S COMPLAINT FILED ON SEPTEMBER 17, 2009; (2)
COMPLAINANT-INTERVENOR RESIDENTIAL FUNDING COMPANY, LLC'S
MOTION FOR SUMMARY JUDGMENT ON ITS COMPLAINT IN INTERVENTION
FOR EJECTMENT; AND (3) COUNTER/CROSS-DEFENDANTS THE BANK OF NEW
YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK
OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP 2006RS3'S AND RESIDENTIAL FUNDING
COMPANY, LLC'S MOTION FOR SUMMARY JUDGMENT AS TO
COUNTER/CROSS-COMPLAINANT ANGELO M. MARIANI, JR.'S
COUNTER-CLAIM AND CROSS-CLAIM FILED ON MARCH 19, 2012**

Defendant THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3's ("BANK OF NEW YORK MELLON") Motion For Summary Judgment as to Plaintiff ANGELO M. MARIANI, JR.'s ("MARIANI") Complaint filed on September 17, 2009, Complainant-Intervenor RESIDENTIAL FUNDING COMPANY, LLC's ("RESIDENTIAL FUNDING") Motion For Summary Judgment on its Complaint in Intervention for Ejectment, and Counter/Cross-Defendants BANK OF NEW YORK MELLON and RESIDENTIAL FUNDING's Motion For Summary Judgment as to Counter/Cross-Complainant Angelo M. Mariani, Jr.'s Counter-Claim and Cross-Claim filed on March 19, 2012 (collectively, the "Motions for Summary Judgment"), came on for hearing before the Honorable Elizabeth A. Strance on June 16, 2014. David Rosen appeared on behalf of BANK OF NEW YORK MELLON and RESIDENTIAL FUNDING. MARIANI appeared *Pro Se*. The Court having considered the pleadings filed herein, and any oral argument at the hearings, and for the reasons stated on the record at hearing on the Motions for Summary Judgment, and for good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Motions for Summary Judgment are GRANTED; and
2. A WRIT OF POSSESSION shall be and is hereby issued forthwith in favor of RESIDENTIAL FUNDING to put it in possession and to remove MARIANI, and all persons and parties holding, by, through, or under MARIANI, including tenants or any of them, and all of their personal belongings, from the premises located at 64-5339 Puu Nani Drive, Kamuela, Hawaii 96743 (TMK No. (3) 6-4-023-036-0000). Said WRIT OF POSSESSION shall be effective immediately.

JUL 17 2014

DATED: Kealahou, Hawaii, _____.

ELIZABETH A. STRANCE (SEAL)

HONORABLE ELIZABETH A. STRANCE
Judge of the above-entitled Court

ANGELO M. MARIANI, JR. v. THE BANK OF NEW YORK MELLON, et. cet.; CIVIL NO.
09-1-339K (EAS); ORDER GRANTING [MOTIONS FOR SUMMARY JUDGMENT].

Exhibit 6-2

FILED

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2014 JUL 17 PM 3: 21

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STATE OF HAWAII**

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

ANGELO M. MARIANI, JR.,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION FKA THE BANK OF NEW
YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JP MORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2006RS3, LOAN# 7440787091 on real
property located at 64-5339 Puu Nani Drive,
Kamuela, Hawaii 96743 TMK (3) 6-4-023-
036-0000, DOE Defendants 1-100,

Defendants.

CIVIL NO. 09-1-339K (EAS)
(Foreclosure) (Kona)

**NOTICE OF ENTRY OF JUDGMENT
FOR POSSESSION**

RESIDENTIAL FUNDING COMPANY,
LLC,

Complainant-Intervenor,

v.

ANGELO M. MARIANI, JR.; and DOE
Defendants 1-100,

Defendant.

ANGELO M. MARIANI, JR.,

Counter/Cross-Complainant,

v.

RESIDENTIAL FUNDING COMPANY,
LLC; AND THE BANK OF NEW YORK
MELLON TRUST COMPANY, NATIONAL
ASSOCIATION FKA THE BANK OF NEW
YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JP MORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2006RS3, LOAN# 7440787091 on real
property located at 64-5339 Puu Nani Drive,
Kamuela, Hawaii 96743 TMK (3) 6-4-023-
036-0000,

Counter/Cross-Defendants.

NOTICE OF ENTRY OF FINAL JUDGMENT FOR POSSESSION

Pursuant to the provisions of Rule 77(d) of the Hawaii Rules of Civil Procedure, NOTICE IS HEREBY GIVEN of the entry of Judgment for Possession as to Complainant-Intervenor RESIDENTIAL FUNDING COMPANY, LLC's ("RESIDENTIAL FUNDING") Complaint in Intervention for Ejectment filed on February 27, 2012 ("Judgment for Possession") in the above-entitled action. The Judgment for Possession is in favor of RESIDENTIAL FUNDING and against Defendant ANGELO M. MARIANI, JR.

DATED: Kealahou, Hawaii, JUL 17 2014.

BY ORDER OF THE COURT

FRANCINE VICTOR (SEAL)

Clerk of the Above-Entitled Court

Copies mailed to the last known address of the following parties:

Angelo M. Mariani, Jr.
P.O. Box 2481
Kamuela, Hawaii 96743
Plaintiff and Counter/Cross-Complainant, *Pro Se*

ANGELO M. MARIANI, JR. v. THE BANK OF NEW YORK MELLON TRUST COMPANY,
NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A.
AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP
2006RS3, et al.; CIVIL NO. 09-1-339K (EAS); NOTICE OF ENTRY OF JUDGMENT FOR
POSSESSION.

Exhibit 6-3

FILED

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2014 JUL 17 PM 3: 18

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

ANGELO M. MARIANI, JR.,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3, LOAN# 7440787091 on real property located at 64-5339 Puu Nani Drive, Kamuela, Hawaii 96743 TMK (3) 6-4-023-036-0000, DOE Defendants 1-100,

Defendants.

CIVIL NO. 09-1-339K (EAS)
(Foreclosure) (Kona)

JUDGMENT FOR POSSESSION

HEARING:

Date: June 16, 2014

Time: 1:00 p.m.

Judge: Hon. Elizabeth A. Stance

I hereby certify that this is a full, true and correct copy of the original on file in this office.

L. Mock Chew

Clerk, Third Circuit Court, State of Hawaii

RESIDENTIAL FUNDING COMPANY,
LLC,

Complainant-Intervenor,

v.

ANGELO M. MARIANI, JR.; and DOE
Defendants 1-100,

Defendant.

ANGELO M. MARIANI, JR.,

Counter/Cross-Complainant,

v.

RESIDENTIAL FUNDING COMPANY,
LLC; AND THE BANK OF NEW YORK
MELLON TRUST COMPANY, NATIONAL
ASSOCIATION FKA THE BANK OF NEW
YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JP MORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2006RS3, LOAN# 7440787091 on real
property located at 64-5339 Puu Nani Drive,
Kamuela, Hawaii 96743 TMK (3) 6-4-023-
036-0000,

Counter/Cross-Defendants.

JUDGMENT FOR POSSESSION

In accordance with Rule 58 of the Hawaii Rules of Civil Procedure, and pursuant to the ORDER GRANTING: (1) DEFENDANT THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF ANGELO M. MARIANI, JR.'S COMPLAINT FILED ON SEPTEMBER 17, 2009; (2) COMPLAINANT-INTERVENOR RESIDENTIAL FUNDING COMPANY, LLC'S MOTION

FOR SUMMARY JUDGMENT ON ITS COMPLAINT IN INTERVENTION FOR EJECTMENT; AND (3) COUNTER/CROSS-DEFENDANTS THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3'S AND RESIDENTIAL FUNDING COMPANY, LLC'S MOTION FOR SUMMARY JUDGMENT AS TO COUNTER/CROSS-COMPLAINANT ANGELO M. MARIANI, JR.'S COUNTER-CLAIM AND CROSS-CLAIM FILED ON MARCH 19, 2012 ("Order"), filed herein, Judgment is hereby entered in favor of Complainant-Intervenor RESIDENTIAL FUNDING COMPANY, LLC ("RESIDENTIAL FUNDING") and against Defendant ANGELO M. MARIANI, JR. ("MARIANI") with regard to RESIDENTIAL FUNDING's Complaint in Intervention for Ejectment filed herein on February 27, 2012.

As a result, RESIDENTIAL FUNDING is hereby awarded and shall be entitled to exclusive possession of the premises located at 64-5339 Puu Nani Drive, Kamuela, Hawaii 96743 (TMK No. (3) 6-4-023-036-0000) (the "Premises") effective immediately.

IT IS ORDERED, ADJUDGED, AND DECREED that Judgment for Possession in favor of RESIDENTIAL FUNDING is hereby entered as follows:

1. RESIDENTIAL FUNDING, or its designee, shall be entitled to possession of the Premises identified above effective immediately; and
2. A Writ of Possession against MARIANI shall be issued forthwith and shall be effective immediately.

DATED: Kealahou, Hawaii, JUL 17 2014.

ELIZABETH A. STRANCE (SEAL)

JUDGE OF THE ABOVE-ENTITLED COURT

ANGELO M. MARIANI, JR. v. THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3, et al.; CIVIL NO. 09-1-339K (EAS); JUDGMENT FOR POSSESSION.

Exhibit 6-4

FILED

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2014 JUL 17 PM 3: 17

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THIRD CIRCUIT COURT
STATE OF HAWAII**

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

ANGELO M. MARIANI, JR.,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3, LOAN# 7440787091 on real property located at 64-5339 Puu Nani Drive, Kamuela, Hawaii 96743 TMK (3) 6-4-023-036-0000, DOE Defendants 1-100,

Defendants.

CIVIL NO. 09-1-339K (EAS)
(Foreclosure) (Kona)

**NOTICE OF ENTRY OF
FINAL JUDGMENT AS TO: (1)
PLAINTIFF ANGELO M. MARIANI,
JR.'S COMPLAINT FILED ON
SEPTEMBER 17, 2009; AND (2)
COUNTER/CROSS-COMPLAINANT
ANGELO M. MARIANI, JR.'S
COUNTER-CLAIM AND CROSS-CLAIM
FILED ON MARCH 19, 2012**

RESIDENTIAL FUNDING COMPANY,
LLC,

Complainant-Intervenor,

v.

ANGELO M. MARIANI, JR.; and DOE
Defendants 1-100,

Defendant.

ANGELO M. MARIANI, JR.,

Counter/Cross-Complainant,

v.

RESIDENTIAL FUNDING COMPANY,
LLC; AND THE BANK OF NEW YORK
MELLON TRUST COMPANY, NATIONAL
ASSOCIATION FKA THE BANK OF NEW
YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JP MORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2006RS3, LOAN# 7440787091 on real
property located at 64-5339 Puu Nani Drive,
Kamuela, Hawaii 96743 TMK (3) 6-4-023-
036-0000,

Counter/Cross-Defendants.

**NOTICE OF ENTRY OF *FINAL JUDGMENT* AS TO: (1) PLAINTIFF ANGELO M.
MARIANI, JR.'S COMPLAINT FILED ON SEPTEMBER 17, 2009; AND (2)
COUNTER/CROSS-COMPLAINANT ANGELO M. MARIANI, JR.'S COUNTER-
CLAIM AND CROSS-CLAIM FILED ON MARCH 19, 2012**

Pursuant to the provisions of Rule 77(d) of the Hawaii Rules of Civil Procedure,
NOTICE IS HEREBY GIVEN of the entry of a Final Judgment as to (1) Plaintiff ANGELO M.
MARIANI, JR.'s ("MARIANI") Complaint filed on September 17, 2009, and (2) Counter/Cross-

Complainant MARIANI's Counter-Claim and Cross-Claim filed on March 19, 2012 ("Judgment as to Mariani's Complaint, Counterclaim, and Cross-Claim") in the above-entitled action.

The Judgment as to Mariani's Complaint, Counterclaim, and Cross-Claim is in favor of Defendant and Counter/Cross-Defendant THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3 and Counter/Cross-Defendant RESIDENTIAL FUNDING COMPANY, LLC and against MARIANI.

DATED: Kealahou, Hawaii, JUL 17 2014

BY ORDER OF THE COURT

FRANCINE VICTOR (SEAL)

Clerk of the Above-Entitled Court

Copies mailed to the last known address of the following parties:

Angelo M. Mariani, Jr.
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Plaintiff and Counter/Cross-Complainant, *Pro Se*

ANGELO M. MARIANI, JR. v. THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3, et al.; CIVIL NO. 09-1-339K (EAS); NOTICE OF ENTRY OF FINAL JUDGMENT AS TO: (1) PLAINTIFF ANGELO M. MARIANI, JR.'S COMPLAINT FILED ON SEPTEMBER 17, 2009; AND (2) COUNTER/CROSS-COMPLAINANT ANGELO M. MARIANI, JR.'S COUNTER-CLAIM AND CROSS-CLAIM FILED ON MARCH 19, 2012.

Exhibit 6-5

FILED

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2014 JUL 17 PM 3: 15

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STATE OF HAWAII**

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

ANGELO M. MARIANI, JR.,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3, LOAN# 7440787091 on real property located at 64-5339 Puu Nani Drive, Kamuela, Hawaii 96743 TMK (3) 6-4-023-036-0000, DOE Defendants 1-100,

Defendants.

CIVIL NO. 09-1-339K (EAS)
(Foreclosure) (Kona)

**FINAL JUDGMENT AS TO: (1)
PLAINTIFF ANGELO M. MARIANI,
JR.'S COMPLAINT FILED ON
SEPTEMBER 17, 2009; AND (2)
COUNTER/CROSS-COMPLAINANT
ANGELO M. MARIANI, JR.'S
COUNTER-CLAIM AND CROSS-CLAIM
FILED ON MARCH 19, 2012**

HEARING:

Date: June 16, 2014

Time: 1:00 p.m.

Judge: Hon. Elizabeth A. Stance

I hereby certify that this is a full, true and correct copy of the original on file in this office.


Clerk, Third Circuit Court, State of Hawaii

RESIDENTIAL FUNDING COMPANY,
LLC,

Complainant-Intervenor,

v.

ANGELO M. MARIANI, JR.; and DOE
Defendants 1-100,

Defendant.

ANGELO M. MARIANI, JR.,

Counter/Cross-Complainant,

v.

RESIDENTIAL FUNDING COMPANY,
LLC; AND THE BANK OF NEW YORK
MELLON TRUST COMPANY, NATIONAL
ASSOCIATION FKA THE BANK OF NEW
YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JP MORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2006RS3, LOAN# 7440787091 on real
property located at 64-5339 Puu Nani Drive,
Kamuela, Hawaii 96743 TMK (3) 6-4-023-
036-0000,

Counter/Cross-Defendants.

FINAL JUDGMENT AS TO:

(1) PLAINTIFF ANGELO M. MARIANI, JR.'S COMPLAINT FILED ON SEPTEMBER 17, 2009; AND (2) COUNTER/CROSS-COMPLAINANT ANGELO M. MARIANI, JR.'S COUNTER-CLAIM AND CROSS-CLAIM FILED ON MARCH 19, 2012

In accordance with Rule 58 of the Hawaii Rules of Civil Procedure, and pursuant to the ORDER GRANTING: (1) DEFENDANT THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF ANGELO M. MARIANI, JR.'S COMPLAINT FILED ON SEPTEMBER 17, 2009; (2)

COMPLAINANT-INTERVENOR RESIDENTIAL FUNDING COMPANY, LLC'S MOTION FOR SUMMARY JUDGMENT ON ITS COMPLAINT IN INTERVENTION FOR EJECTMENT; AND (3) COUNTER/CROSS-DEFENDANTS THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3'S AND RESIDENTIAL FUNDING COMPANY, LLC'S MOTION FOR SUMMARY JUDGMENT AS TO COUNTER/CROSS-COMPLAINANT ANGELO M. MARIANI, JR.'S COUNTER-CLAIM AND CROSS-CLAIM FILED ON MARCH 19, 2012 ("Order"), filed herein, said Order is hereby entered in favor of Defendant and Counter/Cross-Defendant THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK N.A. AS TRUSTEE FOR RAMP 2006RS3 and Counter/Cross-Defendant RESIDENTIAL FUNDING COMPANY, LLC and against Plaintiff and Counter/Cross-Complainant ANGELO M. MARIANI, JR. ("MARIANI") with regard to: (1) MARIANI's Complaint filed on September 17, 2009 ("Complaint"); and (2) MARIANI's Counter-Claim and Cross-Claim filed on March 19, 2012 ("Counterclaim and Cross-Claim").

This Court expressly directs that said Order be entered as a final judgment as to MARIANI's Complaint, Counterclaim, and Cross-Claim. Judgment in accordance with the Order is hereby entered in favor of Defendants and against Plaintiffs on all claims in this action. This Final Judgment resolves all claims against all parties in this action, and there are no claims remaining by or against any party herein. Any claim not disposed of in the Order is hereby dismissed with prejudice. There is no just reason for delay and, upon filing, this Final Judgment shall be final and appealable.

DATED: Kealahou, Hawaii, JUL 17 2014, 2014.

ELIZABETH A. STRANCE (SEAL)

HONORABLE ELIZABETH A. STRANCE
Judge of the Above-Entitled Court

ANGELO M. MARIANI, JR. v. THE BANK OF NEW YORK MELLON TRUST COMPANY, et. cet.; CIVIL NO. 09-1-339K (EAS); FINAL JUDGMENT AS TO: (1) PLAINTIFF ANGELO M. MARIANI, JR.'S COMPLAINT FILED ON SEPTEMBER 17, 2009; AND

(2) COUNTER/CROSS-COMPLAINANT ANGELO M. MARIANI, JR.'S COUNTER-CLAIM AND CROSS-CLAIM FILED ON MARCH 19, 2012.