



**TABLE OF CONTENTS**

	<b>Page</b>
I. PRELIMINARY STATEMENT .....	1
II. REPLY .....	2
A. The Claimant Fails to Adequately Respond to the Borrower Trust's Arguments Regarding His Failure to Plead a Claim for Fraud.....	3
i. The Claimant Fails to Sufficiently Rebut the Borrower Trust's Argument That He Does Not Have Standing to Assert A Fraud Claim.....	3
ii. The Claimant Has Not Alleged Any of the Elements of a Fraud Claim.....	4
B. The Claimant Fails to Sufficiently Respond to the Borrower Trust's Arguments Regarding His Failure to Plead a Claim for Wrongful Foreclosure, Wrongful Attempted Foreclosure, and Quiet Title .....	10
i. If There Has Not Been A Foreclosure, the Claimant Cannot Assert a Claim for Wrongful Foreclosure.....	10
ii. The Claimant Has Failed to Show that Any Untrue or Derogatory Information Concerning His Financial Condition Was Published by the Debtors .....	10
iii. The Claimant's Claim for Injunctive or Declaratory Relief Also Fails.....	11
C. Allegations of Hearsay.....	12

# **TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<u>Aetna Fin. Co. v. Culpepper</u> , 320 S.E.2d 228 (Ga. Ct. App. 1984).....	10
<u>Allegheny Int’l, Inc. v. Snyder</u> , 954 F.2d 167 (3d Cir. 1992).....	2
<u>Barksdale v. DeKalb Cnty.</u> , 561 S.E.2d 163 (Ga. Ct. App. 2002).....	11
<u>Bradshaw v. Bank of America, N.A.</u> , C.A. No. 1:12-CV-3784-RWS, 2013 WL 6669233 (N.D. Ga., Sep. 16, 2013) .....	6
<u>Clay v. Stanfield</u> , 119 S.E.2d 564 (Ga. 1961).....	7
<u>Deutsche Bank Nat’l Trust Co. v. JP Morgan Chase Bank, N.A.</u> , 704 S.E.2d 823 (Ga. Ct. App. 2010).....	5
<u>Edward v. BAC Home Loans Serv., L.P.</u> , 534 Fed. Appx. 888 (11th Cir. 2013).....	3
<u>Feinberg v. Bank of N.Y. (In re Feinberg)</u> , 442 B.R. 215 (Bankr. S.D.N.Y. 2010).....	2
<u>Harris v. Chase Home Fin., LLC</u> , 524 Fed. Appx. 590 (11th Cir. 2013).....	8
<u>Hay v. Bank of Am., N.A.</u> , No. 1:12-CV-01596-RWS, 2013 WL 1339729 (N.D. Ga. Mar. 29, 2013) .....	10
<u>Hill v. Filsoof</u> , 618 S.E.2d 12 (Ga. Ct. App. 2005).....	11
<u>Hines v. Midfirst Bank</u> , C.A. No. 1:12-CV-2527-TWT-JSA, 2013 WL 609401 (N.D. Ga. Jan. 8, 2013) .....	3
<u>In re Adelphia Commc’ns Corp.</u> , Case No. 02-41729 (REG), 2007 Bankr. LEXIS 660 (Bankr. S.D.N.Y. Feb. 20, 2007) .....	3
<u>In re Oneida Ltd.</u> , 400 B.R. 384 (Bankr. S.D.N.Y. 2009).....	3
<u>In re Residential Capital, LLC</u> , 507 B.R. 477 (Bankr. S.D.N.Y. 2014).....	2

<u>In re Rockefeller Ctr. Props.</u> , 272 B.R. 524 (Bankr. S.D.N.Y. 2000).....	3
<u>Mitchell v. Deutsche Bank Nat’l Trust Co.</u> , Case No. 1:13-CV-00304-WSD 2013 WL 6510783 (N.D. Ga. Dec. 12, 2013).....	11
<u>Montgomery v. Bank of Am.</u> , 740 S.E.2d 434 (Ga. Ct. App. 2013).....	3
<u>Thomas v. Henry Cnty. Water and Sewerage Auth.</u> , 731 S.E.2d 66 (Ga. 2012).....	7
<u>You v. JPMorgan Chase Bank, N.A.</u> , 743 S.E.2d 428 (Ga. 2013).....	8

#### **STATUTES**

11 U.S.C. 502(b)(1) .....	2
11 U.S.C. § 502(a) .....	2
Ga. Code. § 44-14-162.2.....	9

#### **OTHER AUTHORITIES**

2 Ga. Real Estate Law & Oricedyre (Pindar, 7th Ed. 2014).....	7
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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”) [Docket No. 6065], hereby submits this reply (the “Reply”), together with the Supplemental Declaration of Kathy Priore, Associate Counsel for The ResCap Liquidating Trust (the “Supplemental Declaration”), annexed hereto as Exhibit 1, to the response of claimant Wekesa Madzimoyo (the “Claimant”) [Docket No. 7731] (the “Response”) to the *Objection Of The Rescap Borrower Claims Trust To Claim Number 5800 Filed By Wekesa Madzimoyo* [Docket No. 7643] (the “Objection”).<sup>1</sup> In further support of the Objection, the Borrower Trust respectfully represents as follows:

#### **I. PRELIMINARY STATEMENT**

1. Based on the record before the Court, the Claimant has failed to carry his requisite burden of proof with respect to the Claim. The Claim is based on allegations that are not supported in law or fact, but rather are an attempt to get out of his obligations under his loan, which he has not made a payment on since March 2009. As an initial matter, the Claimant was not a party to the assignments of the Security Deed, and therefore under Georgia law does not have standing to assert a fraud claim based on purported irregularities in those assignments. Furthermore, the Claimant has neither shown how these purported irregularities amount to a false representation made by the Debtors, nor alleged any of the other elements necessary to assert a cause of action for fraud, including how he was damaged.

2. The Claimant’s efforts to substantiate his other causes of action by a preponderance of the evidence similarly fail. The Claimant does not provide any legal

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<sup>1</sup> Capitalized terms not defined in this Reply have the meaning ascribed to such terms in the Objection.

justification for the Debtors' liability for a wrongful foreclosure claim when no foreclosure has occurred. Similarly, he fails to allege a cause of action for wrongful attempted foreclosure because he has not proven, by a preponderance of the evidence, the existence of any untrue and derogatory statements by the Debtors concerning his financial condition. Finally, his attempts to modify his claim for quiet title into a claim for injunctive or declaratory relief also lack merit because the Claimant has not demonstrated he has a viable claim against the Debtors. Moreover, he lacks standing to seek such relief because he has not tendered the amount due under his loan.

3. For these reasons, as set forth below and in the Objection, the Claim should be disallowed and expunged from the Claims Register in its entirety.

## **II. REPLY**

4. A filed proof of claim is "deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a). Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." 11 U.S.C. 502(b)(1). As noted previously by the Court, claims objections have a shifting burden of proof. Pursuant to Federal Rule of Bankruptcy Procedure 3001(f), a claimant establishes a prima facie case against a debtor upon filing a proof of claim alleging facts sufficient to support the claim. The objecting party is thereafter required to produce evidence equal in force to that provided by the claimant to rebut the presumption of the claimant's prima facie case. In re Residential Capital, LLC, 507 B.R. 477, 490 (Bankr. S.D.N.Y. 2014). See also Allegheny Int'l, Inc. v. Snyder, 954 F.2d 167, 173-74 (3d Cir. 1992).

5. Once an objection refutes an essential allegation of the claim, the burden of persuasion is on the holder of a proof of claim to establish a valid claim against a debtor by a preponderance of the evidence. Residential Capital, 507 B.R. at 490; Feinberg v. Bank of N.Y.

(In re Feinberg), 442 B.R. 215, 220-22 (Bankr. S.D.N.Y. 2010); 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).

**B. The Claimant Fails to Adequately Respond to the Borrower Trust's Arguments Regarding His Failure to Plead a Claim for Fraud**

**i. The Claimant Fails to Sufficiently Rebut the Borrower Trust's Argument That He Does Not Have Standing to Assert A Fraud Claim**

6. The Claimant's fraud claim is predicated on alleged irregularities in the assignment of the Security Deed. In the Response, the Claimant asserts that, contrary to Georgia law, he has standing to challenge the assignment of the Security Deed. See Response ¶¶ 72-76. However, under Georgia law, only a party to an assignment has standing to bring a suit challenging the validity of the assignment. See Montgomery v. Bank of Am., 740 S.E.2d 434, 437 (Ga. Ct. App. 2013) (plaintiff borrower lacked standing to bring fraud claim challenging the assignment of a security deed even if the assignment was flawed); Hines v. Midfirst Bank, C.A. No. 1:12-CV-2527-TWT-JSA, 2013 WL 609401, at \*8 (N.D. Ga. Jan. 8, 2013) ("Plaintiff cannot base her claim of fraud on her allegation that the assignment was forged or fraudulent, because she was not a party to the assignment and she does not allege any facts indicating that she relied on the assignment to her detriment."); Edward v. BAC Home Loans Serv., L.P., 534 Fed. Appx. 888, 890 (11th Cir. 2013) (a borrower lacked standing to challenge a foreclosure based on alleged irregularities in an assignment, even in the face of allegations of forgery.)

7. The Claimant attempts to distinguish his claim from the claims in Montgomery because his claim purportedly involves a broken chain of title. See Response ¶ 73. However, this has no merit, since the Montgomery court specifically dealt with the question of an improper assignment. See Montgomery, 740 S.E.2d at 438. He also attempts to rely on an unpublished

opinion from the Northern District of Georgia, Bahaeddin Kharazmi v. BAC, No. 11-CV-02933-AT (N.D. Ga. May 4, 2012) to support his assertion that, contrary to the holding in Montgomery, a borrower that is not a party to the assignment can challenge said assignment. See Response ¶ 75. However, Bahaeddin is an unpublished federal district court case that was decided prior to the decisions in Montgomery, Hines, and Edward, and Bahaeddin does not address a claim for fraud. As a result, its holding is irrelevant because there is binding Georgia authority that is directly on point. Since the Claimant has not provided any controlling legal authority to support his position, he has failed to demonstrate his standing to challenge the assignments under Georgia law.

**ii. The Claimant Has Not Alleged Any of the Elements of a Fraud Claim**

8. The Claimant's fraud claim is predicated on the assertion that the Debtors misrepresented to him that they were authorized to foreclose on his property on behalf of Bank of New York. He alleges that Bank of New York was not the holder of the loan because there were errors in the assignment of the Security Deed to Bank of New York. See Response ¶ 61. However, as was demonstrated in the Objection, there was a proper chain of title from Equibanc to Bank of New York. Therefore, Bank of New York, as holder of the Security Deed, was entitled to initiate a non-judicial foreclosure proceeding against the Claimant, and there was no misrepresentation to the Claimant by the Debtors. Furthermore, the Claimant has failed to assert the other elements of fraud, including how he was damaged by the purported misrepresentation.

*Chain of Title is Unbroken and Vests Title of the Security Deed with Bank of New York*

9. As noted in the Objection, the Loan was first securitized on or about June 1, 1999, where First National Bank of Chicago was appointed as Trustee. See Objection ¶ 15. The loan was pulled out of the securitization in late 2005 and was put into another securitization on or about April 1, 2006, and J.P. Morgan Chase Bank, N.A. ("J.P. Morgan") was appointed as



Trustee.<sup>2</sup> See id. When the Claimant's loan was securitized in 2006, Residential Funding Company, LLC ("RFC") sold the loan to its affiliated depositor Residential Asset Mortgage Products, Inc. ("RAMP"). See Supplemental Declaration ¶ 5. RAMP then immediately deposited the loan with the issuer, RAAC Series 2006RP2 (the "Trust"), where J.P. Morgan Chase was appointed as Trustee.<sup>3</sup> See id. The Trustee of the Trust is the owner of the loan on behalf of the security-holders of the Trust. See id. Bank of New York was subsequently appointed as successor Trustee. See id. Accordingly, the claimant's loan was sold to RAMP and then deposited in the Trust. See id.

10. The first corrective assignment, which was attached to the Objection, shows the Bank of New York as the Trustee for "RAMP 2006 RP2," dated January 18, 2011 (the "First Corrective Assignment"). The First Corrective Assignment was incorrect as it listed the trust name as "RAMP 2006 RP2" instead of "RAAC 2006 RP2." See Exhibit E to the Priore Declaration. This assignment was done out of an abundance of caution, as First National Bank of Chicago was merged into Bank One, N.A., which was subsequently merged into J.P. Morgan, which became Trustee. Bank of New York was subsequently appointed as successor Trustee to J.P. Morgan after Bank of New York purchased J.P. Morgan's trust business. See Supplemental Declaration ¶ 6.

11. The second corrective assignment, attached to the Supplemental Declaration as Exhibit A, shows Bank of New York as the Trustee for the Trust (i.e. "RAAC 2006 RP2," not "RAMP 2006 RP2") and is dated September 20, 2011 (the "Second Corrective Assignment").

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<sup>2</sup> J.P. Morgan was appointed Trustee as the result of corporate mergers between J.P. Morgan, Bank One, N.A., and First National Bank of Chicago.

<sup>3</sup> The Trust is the Issuer of the securities that are collateralized by a pool of mortgage loans, which includes, according to the Debtors' books and records, the Claimant's loan.

The Second Corrective Assignment was executed to provide the correct entity, the Trust, as the entity on whose behalf Bank of New York was acting as Trustee. See Supplemental Declaration ¶ 7.

12. There were three notices of foreclosure sale sent to the Claimant. The first and second were sent July 3, 2009 and February 14, 2011 and listed Bank of New York as the Trustee for “RAMP 2006 RP2”. The third was sent July 25, 2011 and listed Bank of New York as the Trustee for “RAAC 2006 RP2.” See Notices of Foreclosure, attached to the Supplemental Declaration as Exhibit B. In the Response, Claimant attempts to argue that inconsistencies between the assignments and the notices of foreclosure demonstrate that Bank of New York did not have standing to foreclose. See Response ¶¶ 78-84. Since the First Corrective Assignment incorrectly listed “RAMP 2006 RP2” as the Trust, the third notice of foreclosure, which accurately listed the Trust as RAAC 2006 RP2, was inconsistent with the First Corrective Assignment. However, the Second Corrective Assignment, filed after the third notice of foreclosure, fixed this mistake.

*The Assignments Were Not Actually Necessary to Make Bank of New York the Holder of the Security Deed*

13. In Georgia, assignments are not necessary to transfer property interests in connection with a bank merger. See Bradshaw v. Bank of America, N.A., C.A. No. 1:12-CV-3784-RWS, 2013 WL 6669233 at \*9 (N.D. Ga., Sep. 16, 2013) (“Under Georgia law, when banking entities merge, it is not necessary to record an assignment of loans or security deeds in the real estate records.” (citation omitted)) Therefore, the First and Second Corrective Assignments were executed out of an abundance of caution to account for the precise series of corporate mergers that led to the Security Deed being held by Bank of New York. As a result, the assignments were not even necessary to make vest title in Bank of New York, as it obtained

title as a result of the corporate mergers. As a result, Bank of New York, as the holder of the Security Deed, had standing to initiate a foreclosure proceeding, but it never actually commenced a foreclosure action.

*The Corrective Assignments Had No Impact on the Claimant's Obligations Under the Loan*

14. The Claimant alleges that the correction of the Trust name on the First and Second Corrective Assignments invalidates these assignments. He also appears to allege, inconsistently, that both assignments were valid, stating that the Second Corrective Assignment “paid off his mortgage or doubled his indebtedness.” See Response ¶ 85. However, neither of these assertions is accurate. “[A] mere misnomer of a corporation in a written instrument... is not material or vital in its consequences, if the identity of the corporation intended is clear or can be ascertained by proof.” Deutsche Bank Nat’l Trust Co. v. JP Morgan Chase Bank, N.A., 704 S.E.2d 823, 828 (Ga. Ct. App. 2010) (citation omitted). The fact that the name of the Trust was corrected is immaterial, since both assignments demonstrate that title was conveyed to Bank of New York as Trustee. Furthermore, “[a] corrective deed is valid without any new consideration, and acceptance by the grantee constitutes an admission of the incorrectness of the original deed.” 2 Ga. Real Estate Law & Oricedyre 19:114 (Pindar, 7th Ed. 2014) (citing Deck v. Deck, 24 S.E.2d 303 (Ga. 1943); Clay v. Stanfield, 119 S.E.2d 564, 565 (Ga. 1961); Thomas v. Henry Cnty. Water and Sewerage Auth., 731 S.E.2d 66 (Ga. 2012)). Here, all of the parties involved in the assignment accepted the First and Second Corrective Assignments.

15. Furthermore, the Second Corrective Assignment did not amount to a second assignment of the Claimant’s loan, but rather it corrected and replaced the previous assignment. Therefore Claimant’s assertion that the Second Corrective Assignment doubled his debt is incorrect, and the Claimant does not provide any evidence to the contrary. As a result, the

Second Corrective Assignment is valid, and Bank of New York properly holds the Security Deed.

*Bank of New York Had Standing to Initiate Foreclosure*

16. As noted in the Objection, under Georgia law, the holder of the security deed has the authority to foreclose even if it does not hold the note. See You v. JPMorgan Chase Bank, N.A., 743 S.E.2d 428, 428 (Ga. 2013) (answering a certified question from the U.S. District Court of the N. Dist. of Georgia); see also Harris v. Chase Home Fin., LLC, 524 Fed. Appx. 590, 592-93 (11th Cir. 2013) (applying You and finding that the holder of a security deed had authority to foreclose even though it did not hold the note). Therefore, as was demonstrated in the Objection, Bank of New York is the proper holder of the Security Deed, and as a result had the authority to foreclose on the Claimant's property.

*The Claimant's Other Arguments that Chain of Title Was Broken Have No Merit*

17. The Claimant also alleges that there is nothing showing that the loan was transferred to RFC, and therefore RFC could not transfer an interest in the loan. See Response ¶ 53. However, the Note shows endorsements to RFC. The fact that the Security Deed was never assigned to RFC does not show a break in title, as it was assigned to First National Bank of Chicago, and later Bank of New York.

18. The Claimant also alleges, without providing any legal or evidentiary support, that Equibanc was not the source of the funds for his loan, and therefore "there is no underlying debt." See Response ¶¶ 57-58. In addition, the Claimant does not demonstrate why, even if this is true, this voids the debt he owes as a result of his loan transaction.

19. The Claimant further alleges that the assignment from Equibanc to First Bank of Chicago was invalid because it does not identify the trust for which First Bank of Chicago was

acting as Trustee. See Response ¶ 55. However, because First Bank of Chicago, as Trustee, was the actual owner of the loan, the fact that the specific trust is not listed does not make the assignment invalid.

20. Additionally, the Claimant argues that there was a break in the chain of title when his loan was pulled out of securitization in late 2005. See Response ¶ 54. However, when the loan was pulled out of securitization, the Note was transferred back to RFC, and RFC then transferred the Note to J.P. Morgan when the loan was put into the other securitization in 2006. See Supplemental Declaration ¶9. This is shown by endorsements on the Note from Bank One, N.A., f/k/a First National Bank of Chicago, to RFC and from RFC to J.P. Morgan. See Note, attached to the Priore Declaration as Exhibit B.

21. As a result, none of the Claimant's allegations demonstrate that GMACM misrepresented to him that it was entitled to initiate foreclosure on behalf of Bank of New York.

*The Claimant Cannot Show He Was Damaged by the Purported Misrepresentation*

22. Even if the Claimant has sufficiently alleged that a misrepresentation occurred, he has not demonstrated how he was damaged by any alleged misrepresentation related to the assignments. In Georgia, the only legal significance of a notice of foreclosure is that it is required for a foreclosing party to proceed with the sale. See Ga. Code. § 44-14-162.2. As was noted in the Objection, no foreclosure sale has ever occurred, and therefore, the Claimant has not been harmed by any purported misrepresentations in the Notices of Foreclosure, and has no basis to allege the damages element of a fraud claim.

*The Claimant Has Not Alleged the Other Elements of Fraud*

23. The Claimant has also failed to allege any of the other elements of fraud. The Claimant has not alleged that the purported misrepresentations were made to induce him to act or not to act and he has not proffered an allegation that he relied on the purported

misrepresentations. As a result, the Claimant has failed to meet his burden of alleging that the Debtors' actions gave rise to even a single element of a claim for fraud.

**C. The Claimant Fails to Sufficiently Respond to the Borrower Trust's Arguments Regarding His Failure to Plead a Claim for Wrongful Foreclosure, Wrongful Attempted Foreclosure, and Quiet Title**

**i. If There Has Not Been A Foreclosure, the Claimant Cannot Assert a Claim for Wrongful Foreclosure**

24. As noted in the Objection, the Claimant cannot state a claim for wrongful foreclosure because foreclosure has not yet occurred. Hay v. Bank of Am., N.A., No. 1:12-CV-01596-RWS, 2013 WL 1339729, at \*3 (N.D. Ga. Mar. 29, 2013) ("Under Georgia law, a party may not state a claim for wrongful foreclosure where no foreclosure sale has occurred.") The Claimant does not provide any legal authority to the contrary, instead attempting to challenge a case that is not cited in the Objection. See Response ¶ 92. Furthermore, the Claimant has still not stated the other elements of a wrongful foreclosure claim, specifically that GMACM's actions would be the cause of the nonexistent wrongful foreclosure and that the Claimant was damaged. As a result, the Claimant has failed to state a cause of action for wrongful foreclosure.

**ii. The Claimant Has Failed to Show that Any Untrue or Derogatory Information Concerning His Financial Condition Was Published by the Debtors**

25. As noted in the Objection, in order to establish a claim for wrongful attempted foreclosure, the Claimant must establish "a knowing and intentional publication of untrue and derogatory information concerning [his] financial condition, and that [those] damages were sustained as a result of this publication." Aetna Fin. Co. v. Culpepper, 320 S.E.2d 228, 232 (Ga. Ct. App. 1984). The Claimant alleges that he was not in default of the note, even though he has not made a payment since March 2009, because he was not obligated to make payments to Bank of New York because of the alleged defects in the assignment of the Security Deed. See

Response, ¶¶ 89-90. However, the Claimant provides nothing to support his assertion that he was not required to make payments that he admits were due under his loan documents, and as such has not shown that any false statement was made in the foreclosure notice suggesting he was in default of the loan. See Mitchell v. Deutsche Bank Nat'l Trust Co., Case No. 1:13-CV-00304-WSD 2013 WL 6510783 at \*3 (N.D. Ga. Dec. 12, 2013) (rejecting a claim for wrongful attempted foreclosure where the Claimant characterized their default as withheld payments “pending legal validation of Defendants’ standing.” (citation omitted)) As a result, Claimant has not met his burden of alleging a cause of action for wrongful attempted foreclosure.

**iii. The Claimant’s Claim for Injunctive or Declaratory Relief Also Fails**

26. In the Response, the Claimant appears to admit that he cannot state a cause of action for quiet title (which was asserted in the Complaint attached to the proof of claim), but argues that he should nevertheless be entitled to declaratory or injunctive relief that would enjoin any future non-judicial foreclosure sale by Bank of New York. See Response, ¶ 97. As an initial matter, this is the first time that the Claimant has raised such a cause of action. Secondly, because the Claimant has not demonstrated that he has a viable claim against the Debtors, he cannot be entitled to equitable or declaratory relief. See Barksdale v. DeKalb Cnty., 561 S.E.2d 163, 164 (Ga. Ct. App. 2002) (“If an action for declaratory judgment raises issues that are moot ... the action must be dismissed as decisively as would any other action presenting the same – non-justiciable issues.”) Additionally, because no Debtor has any interest in the loan, this Court cannot provide the Claimant with the relief he seeks, as it would be a determination of the Claimant’s rights vis-à-vis other non-Debtor parties.

27. Furthermore, even if the Claimant could seek an injunction against foreclosure as part of a claim against the Debtors, he lacks standing to seek such relief because he has not tendered the amounts admittedly due under the loan. See Hill v. Filsoof, 618 S.E.2d 12, 14 (Ga.

Ct. App. 2005) (affirming dismissal of borrower's action to set aside allegedly wrongful foreclosure because he did not tender payment of the debt owed under the note secured by the property, which was a prerequisite to the plaintiff's action to set aside the foreclosure sale). Here, the Claimant does not allege that he has tendered the amounts due under his loan, but admits that he has been withholding payment, and has not provided a sufficient legal basis for doing so. As a result, he does not have standing to assert a cause of action for declaratory or injunctive relief.

**D. Allegations of Hearsay**

28. The Claimant also objects to the Borrower Trust's submission of the Priore Declaration in the support of the Objection as hearsay. See Response ¶¶ 40-46. This objection is unsubstantiated and lacks any objective support. As an initial matter, the Claimant does not identify any of the statements in the Priore Declaration as being factually inaccurate, nor does she identify a legitimate basis for calling into question the trustworthiness of Ms. Priore's written testimony. Moreover, all of the statements made are based on information maintained in the Debtors' Books and Records, records kept in the ordinary course of business of the Debtors. As a result, these statements qualify as an exception to the rule against hearsay under Fed. R. of Evid. 803(6)(B).

WHEREFORE, the Borrower Trust respectfully requests that the Court overrule the Response and grant the relief requested in the Objection by disallowing and expunging the Claim in its entirety.



Dated: November 17, 2014  
New York, New York

/s/ Norman S. Rosenbaum  
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*Counsel for The ResCap Borrower Claims Trust*

**Exhibit 1**

**Supplemental 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
-----	)	

**SUPPLEMENTAL DECLARATION OF KATHY PRIORE IN SUPPORT OF  
THE RESCAP BORROWER CLAIMS TRUST’S REPLY IN SUPPORT OF ITS  
OBJECTION TO CLAIM NUMBER 5800 FILED BY WEKESA MADZIMOYO**

I, Kathy Priore, hereby declare as follows:

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

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

Liquidating Trust, among my other duties, I continue to assist the Liquidating Trust and the Borrower Claims Trust (the “Borrower Trust”) in connection with the claims reconciliation process.<sup>1</sup> I am authorized to submit this declaration (the “Declaration”) in support of the *Rescap Borrower Claims Trust’s Reply in Support of its Objection to Claim No. 5800 Filed by Wekesa Madzimoyo* (the “Reply”).<sup>2</sup>

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 current and former capacities as Associate Counsel to the Liquidating Trust and ResCap, I am intimately familiar with the Debtors’ claims reconciliation process. Except as otherwise indicated, all statements in this Declaration are based upon my familiarity with the Debtors’ Books and Records (the “Books and Records”), as well as 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 other Liquidating Trust personnel have reviewed and analyzed the proof of claim form and supporting documentation filed by the Claimant. Since the Plan went effective and the Borrower Trust was established, I, along with other members of the

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Objection.

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 other Liquidating Trust personnel, together with professional advisors, have reviewed (i) information supplied or verified by former personnel in departments within the Debtors' various business units, (ii) the Books and Records, (iii) the Schedules, (iv) other filed proofs of claim, and/or (vi) the official claims register maintained in the Debtors' Chapter 11 Cases.

5. When the Claimant's loan was securitized in 2006, Debtor Residential Funding Company, ("RFC") sold the loan to its affiliated depositor Residential Asset Mortgage Products, Inc. ("RAMP"). RAMP then immediately deposited the loan with the issuer, RAAC Series 2006RP2 (the "Trust"), where J.P. Morgan Chase was appointed as Trustee.<sup>3</sup> The Trustee of the Trust is the owner of the loan on behalf of the security-holders of the Trust. Bank of New York was subsequently appointed as successor Trustee. Accordingly, the claimant's loan was sold to RAMP and then deposited in the Trust.

6. The first corrective assignment, which was attached to the Objection, incorrectly shows the Bank of New York as the Trustee for RAMP 2006 RP2, dated January 18, 2011 (the "First Corrective Assignment"). The Trust should have been identified as RAAC 2006 RP2. This assignment was done out of an abundance of caution, as First National Bank of Chicago was merged into Bank One, N.A., which was subsequently merged into J.P. Morgan Chase Bank, N.A. ("J.P. Morgan"), which became Trustee. Bank of New York was subsequently appointed as successor Trustee to J.P. Morgan after Bank of New York purchased J.P. Morgan's trust business.

---

<sup>3</sup> The Trust is the Issuer of the securities that are collateralized by a pool of mortgage loans, which includes, according to the Debtors' books and records, the Claimant's loan.

7. The second corrective assignment, attached hereto as Exhibit A, shows Bank of New York as the Trustee for the Trust and is dated September 20, 2011 (the “Second Corrective Assignment”). The Second Corrective Assignment was executed to provide the correct entity, the Trust, as the entity on whose behalf Bank of New York was acting as Trustee.

8. There were three notices of foreclosure sale sent to the Claimant. The first and second were sent July 3, 2009 and February 14, 2011 and listed Bank of New York as the Trustee for “RAMP 2006 RP2”. The third was sent July 25, 2011 and listed Bank of New York as the Trustee for “RAAC 2006 RP2.” See Notices of Foreclosure, attached hereto as Exhibit B.

9. When the loan was pulled out of securitization, the Note was transferred back to RFC, and RFC then transferred the Note to J.P. Morgan, as Trustee, when the loan was put into the other securitization in 2006.

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

Dated: November 17, 2014

/s/ Kathy Priore

Kathy Priore  
Associate Counsel for ResCap Liquidating  
Trust

**Exhibit A**

2011155103 DEED BOOK 22644 Pg 791  


Filed and Recorded:  
9/27/2011 10:30:53 AM  
Debra DeBerry  
Clerk of Superior Court  
DeKalb County, Georgia

When Recorded, Return to:  
Attn: Edwin A. Caplan  
McCurdy & Candler, LLC  
3525 Piedmont Road NE, Six Piedmont Center, Suite 700  
Atlanta, GA 30305

Please cross-reference to Security Deed  
in DB 10618, P 268; Assignment in  
DB 21860, P 499; and Corrective  
Assignment in DB 22326, P 593

STATE OF Pennsylvania  
COUNTY OF Montgomery

File No. 09-15522

**\*\*SECOND CORRECTIVE ASSIGNMENT OF SECURITY DEED**

FOR VALUE RECEIVED, The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee (hereinafter referred to as "Assignor") hereby sells, assigns, transfers, sets over and conveys without recourse unto The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2 (hereinafter referred to as "Assignee"), whose address is 1100 Virginia Drive, Fort Washington, PA 19034, that certain Security Deed or Deed to Secure Debt executed by Wekesa O. Madzimoyo to FT Mortgage Companies d.b.a. EquiBanc Mortgage Corporation and dated March 23, 1999, recorded in Deed Book 10618, Page 268, Clerk's Office, Superior Court of DeKalb County, Georgia, together with the real property therein described, which has the property address of 852 Brafferton Place, Stone Mountain, GA 30083; and also the indebtedness described in said Deed and secured thereby, having this day been transferred and assigned to the said Assignee together with all of Assignor's right, title and interest in and to the said Deed, the property therein described and the indebtedness secured; and the said Assignee is hereby subrogated to all the rights, powers, privileges and securities vested in Assignor under and by virtue of the aforesaid Security Deed or Deed to Secure Debt.

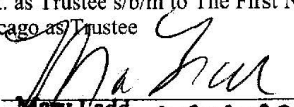
**\*\* This Second Corrective Assignment of Security Deed is being recorded in order to correct the Assignee/Trust name.**

This Assignment of Security Deed is executed on this 20 day of September, 2011.

Signed, sealed and delivered

in the presence of:

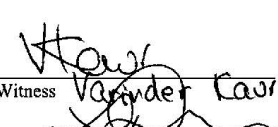
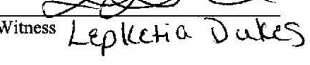
The Bank of New York Mellon Trust Company,  
National Association fka The Bank of New York  
Trust Company, N.A. as successor to JPMorgan  
Chase Bank, N.A. as Trustee s/b/m to Bank One,  
N.A. as Trustee s/b/m to The First National Bank of  
Chicago as Trustee

By:   
Its: Mary Ladd Authorized Officer

By:   
Its: Jacqueline Keeley Authorized Officer

Witness

Witness

  
Vander Larr  
  
Lepketa Dukes



Debra DeBerry  
Clerk of Superior Court  
DeKalb County, Georgia

ACKNOWLEDGMENT

**Pennsylvania**  
~~Pennsylvania~~  
STATE OF Pennsylvania  
COUNTY OF Montgomery

On 9-20-2011 before me, Regina M. Frederick, a Notary Public  
in and for said state, personally appeared Mary Ladd and  
Sadie Kelly, personally known to me, or proved to me on the basis of satisfactory  
evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and  
that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Pennsylvania that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

Regina M. Frederick

(Seal)

NOTARIAL SEAL  
REGINA M FREDERICK  
Notary Public  
UPPER DUBLIN TWP., MONTGOMERY COUNTY  
My Commission Expires Nov 22, 2012

**Exhibit B**

LAW OFFICES  
**McCURDY & CANDLER, L.L.C.**

SUITE 600  
250 EAST Ponce de Leon Avenue  
Decatur, Georgia 30030

JULIUS A. McCURDY (1903 - 1993)  
SCOTT CANDLER, JR. (1924 - 1994)  
J. ROBIN HARRIS (1923 - 1989)

JOHN WALTER DRAKE  
ALAN E. RAUBER  
JOHN C. SAMMON  
ANTHONY DEMARLO  
SCOTT CANDLER, III  
CLARE E. CANDLER  
EDNA E. HAWES  
SIDNEY A. GELBERMAN  
DONALD C. SUESSMITH, JR.  
J. MICHAEL DUDMAN  
CHRISTIE B. HENNINGS  
DEBORAH Y. CHANDLER  
REBECCA A. HORTING  
MARGARET C. COURTHOIT

FRANK R. OLSON\*  
A. BASTY VERNER  
LAURA A. GRIFKA  
C. ELIZABETH JONES  
PATRICK N. TAGGART  
JOHN D. ANDRELE  
C. ERIC RIPLETT  
JESSICA A. PACE  
DAVID E. SKOLNICK  
CHRISTINA J. SOLORUS  
TENNILLE B. HAILEY  
ROBERT J. WILKINSON\*  
OF COUNSEL  
FRANK J. RHODES, JR.  
H. RAIFORD HODGES, JR. (RETIRED)

\*ALSO ADMITTED IN TENNESSEE

MAILING ADDRESS

Post Office Box 57  
Decatur, Georgia 30031

TELEPHONE: 404-373-1612  
MAIN TELECOPIER: 404-370-7232

WEBSITE: [WWW.MCCURDYCANDLER.COM](http://WWW.MCCURDYCANDLER.COM)

July 3, 2009

Certified Mail

Return Requested 7008 1830 0001 0661 3884  
and Regular Mail

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

RE: NOTICE OF FORECLOSURE SALE ENCLOSED

Our File No.: 09-15522  
Loan No.: [REDACTED] 7285  
Borrower Name: Wekesa O. Madzimoyo  
Property Address: 852 Brafferton Place  
Stone Mountain, GA 30083

**\*\*\*Pursuant to O.C.G.A. Section 44-14-162.2, the following is the entity who has full authority to discuss, negotiate, or change all terms of the mortgage with you concerning the foreclosure alternatives described later in this letter.\*\*\***

**Servicer: GMAC Mortgage, LLC**  
**Address: Two Ravinia Dr., Suite 500**  
**Atlanta, GA 30346**  
**Phone Number: Joyce Gregory-6788557067**

**Creditor: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2**

Dear Sir or Madam:

By letter dated July 3, 2009, (the "Initial Communication Letter"), I notified you that the above-referenced creditor has referred the referenced loan to this law firm for handling. That letter also advised you of certain rights (the "Borrowers' Rights" which include your right to validate the debt) you could exercise within 30 days of your receipt of the Initial Communication Letter. Nothing in this letter will prevent you from exercising the Borrowers' Rights as explained in the Initial Communication Letter.

36

A failure to comply with the terms of the above loan with The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 has created a default. As a result, the entire amount of the outstanding balance of the loan has been, and is hereby, declared immediately due and payable. This letter is a formal demand for immediate payment of the total indebtedness. Any partial payment received by The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 on the subject debt after the date of this letter will be applied to the reduction of the aforesaid debt and will not result in a reinstatement or a deceleration of the loan.

Advertisement of foreclosure will be inserted, as provided by law, providing for public sale to be held on August 4, 2009, before the courthouse door of DeKalb County, Georgia.

Please be advised that the provisions in the loan documents relative to payment of attorney's fees, in addition to principal and interest, will be enforced. Unless the entire balance is paid within ten (10) days from the date you receive this notice, such attorney's fees as allowed by Official Code of Georgia, §13-1-11, as amended, will be owed.

If you are currently in the military service AND joined after signing the mortgage (Security Deed) now in foreclosure, please so notify this office immediately. You may be entitled to relief under the Soldiers and Sailors Relief Act. When contacting this office as to your military service you must provide us with positive proof as to your military status. The name, address and telephone number of your Base Commander is essential. If you do not provide this information we will assume that you are not entitled to protection under the above mentioned act.

If you have received a discharge in Bankruptcy proceeding, this notice is not intended to indicate that you are personally liable for this debt. In this instance the information concerning the associated debt owed is for informational purposes only and should be disregarded for any purposes other than that of conducting a non judicial foreclosure of the security pursuant to Georgia law.

The Servicer may allow you to reinstate the loan and stop the foreclosure. You may call to find out if reinstatement is allowed; and if allowed, to find out the amount of money you must pay in order to cure the default. If you are allowed to reinstate your loan, payment must be made through our office in the form of certified funds or cashier's check. Other alternatives the Servicer may consider are full payoffs, short payoffs, deeds in lieu of foreclosure, repay plan, loan modification or some other mutual agreement. The Servicer is willing to consider your individual circumstances and will be flexible in its consideration of various alternatives. This is not meant to indicate that the Servicer will definitely accept any of the above alternatives as your loan has been accelerated and foreclosure proceedings will continue. I urge you to contact the Servicer at Joyce Gregory-6788557067 immediately regarding your situation. You may also contact our office at our toll free number of 1-866-303-0517 to assist with your communications with the Servicer.

The enclosed "Notice of Sale Under Power" is a copy of the advertisement sent to The Champion Newspaper for publication.

**BE GOVERNED ACCORDINGLY.**

McCurdy & Candler, L.L.C.

*Anthony DeMarlo*

Anthony DeMarlo  
Attorney for The Bank of New York Mellon Trust  
Company, National Association fka The Bank of New York Trust  
Company, N.A. as successor to JPMorgan Chase Bank N.A. as  
Trustee for RAMP 2006RP2

(37)

LAW OFFICES  
**McCurdy & Candler, LLC**

516 Piedmont Center, Suite 700  
3525 Piedmont Road, NE  
Atlanta, GA 30305

JULIUS A. McCURDY (1903 - 1993)  
SCOTT CANDLER, JR. (1926 - 1994)  
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JOHN WALTER DRAKE  
ALAN E. RAUBER  
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ANTHONY E. MASELLI  
BAHANCA K. DAVIS  
TODD H. SURDEN

REBECCA A. BOELTING  
MARGARET C. COURTHRIGHT

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WEBSITE: [WWW.MCCURDYCANDLER.COM](http://WWW.MCCURDYCANDLER.COM)

February 14, 2011

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

Re: Our File No.: 09-15522  
Loan No.: [REDACTED] 7285  
Payoff: \$163,289.53  
Borrower Name: Wekesa O. Madzimoyo  
Property Address: 852 Brafferton Place  
Stone Mountain, GA 30083

**Servicer: GMAC Mortgage, LLC**

**Creditor: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2**

Dear Borrower:

**NOTICE PURSUANT TO FAIR DEBT COLLECTION PRACTICES ACT 15 USC 1692  
INITIAL COMMUNICATION LETTER**

This law firm represents The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 the creditor on the above referenced loan. This letter is to advise you that we have been retained to collect the debt secured by the above-referenced property, which may involve foreclosure proceedings against said property. As of the date of this letter, you owe \$163,289.53. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, you may call our loss mitigation department at 1-866-303-0517.



Page 2

This letter is an attempt to collect a debt and any information obtained by virtue of it will be used for that purpose. Unless you notify us within thirty (30) days after receipt of this letter that the validity of this debt, or any portion of it, is disputed, we will assume that the debt is valid. If you notify us in writing of a dispute, we will obtain verification of the debt and mail it to you. If the creditor named in this letter is not the original creditor, and you make a written request to this law firm within thirty (30) days after receipt of this notice, then the name and address of the original creditor will be mailed to you by this law firm. We may commence the foreclosure action without waiting thirty (30) days, if so requested by our client.

If you have received a discharge in Bankruptcy proceeding, this notice is not intended to indicate that you are personally liable for this debt. In this instance the information concerning the associated debt owed is for informational purposes only and should be disregarded for any purposes other than that of conducting a non judicial foreclosure of the security pursuant to Georgia law.

The Servicer may allow you to reinstate the loan and stop the foreclosure. You may call to find out if reinstatement is allowed; and if allowed, to find out the amount of money you must pay in order to cure the default. If you are allowed to reinstate your loan, payment must be made through our office in the form of certified funds or cashier's check. Other alternatives the Servicer may consider are full payoffs, short payoffs, deeds in lieu of foreclosure, repay plan, loan modification or some other mutual agreement. The Servicer is willing to consider your individual circumstances and will be flexible in its consideration of various alternatives. This is not meant to indicate that the Servicer will definitely accept any of the above alternatives as your loan has been accelerated and foreclosure proceedings will continue. I urge you to contact the Servicer at 678-855-7067 immediately regarding your situation. You may also contact our office at our toll free number of 1-866-303-0517 to assist with your communications with the Servicer.

BE GOVERNED ACCORDINGLY.

Sincerely,

**Anthony DeMarlo**  
Anthony DeMarlo

AD/awilby

THIS LAW FIRM IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE



LAW OFFICES  
**McCurdy & Candler, LLC**

Six Piedmont Center, Suite 700  
3525 Piedmont Road, NE  
Atlanta, GA 30305

TELEPHONE: 404-373-1612  
MAIN TELECOPIER: 404-378-7232

WEBSITE: WWW.MCCURDYCANDLER.COM

July 25, 2011

Certified Mail  
Return Requested  
and Regular Mail

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

RE: NOTICE OF FORECLOSURE SALE ENCLOSED

Our File No.: 09-15522  
Loan No.: [REDACTED] 7285  
Borrower Name: Wekesa O. Madzimoyo  
Property Address: 852 Brafferton Place  
Stone Mountain, GA 30083

**\*\*\*Pursuant to O.C.G.A. Section 44-14-162.2, the following is the entity who has full authority to discuss, negotiate, or change all terms of the mortgage with you concerning the foreclosure alternatives described later in this letter.\*\*\***

**Servicer: GMAC Mortgage, LLC**  
**Address: Two Ravinia Dr., Suite 500**  
**Atlanta, GA 30346**  
**Phone Number: 678-855-7067**

**Creditor: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2**

Dear Sir or Madam:

By letter dated July 25, 2011, (the "Initial Communication Letter"), I notified you that the above-referenced creditor has referred the referenced loan to this law firm for handling. That letter also advised you of certain rights (the "Borrowers' Rights" which include your right to validate the debt) you could exercise within 30 days of your receipt of the Initial Communication Letter. Nothing in this letter will prevent you from exercising the Borrowers' Rights as explained in the Initial Communication Letter.

A failure to comply with the terms of the above loan with The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2 has created a default. As a result, the entire amount of the outstanding balance of the loan has been, and is hereby, declared immediately due and payable. This letter is a formal demand for immediate payment of the total indebtedness. Any partial payment received by The Bank of New York Mellon Trust Company, National Association fka

Advertisement of foreclosure will be inserted, as provided by law, providing for public sale to be held on September 6, 2011, before the courthouse door of DeKalb County, Georgia.

Please be advised that the provisions in the loan documents relative to payment of attorney's fees, in addition to principal and interest, will be enforced. Unless the entire balance is paid within ten (10) days from the date you receive this notice, such attorney's fees as allowed by Official Code of Georgia, §13-1-11, as amended, will be owed.

If you are currently in the military service AND joined after signing the mortgage (Security Deed) now in foreclosure, please so notify this office immediately. You may be entitled to relief under the Soldiers and Sailors Relief Act. When contacting this office as to your military service you must provide us with positive proof as to your military status. The name, address and telephone number of your Base Commander is essential. If you do not provide this information we will assume that you are not entitled to protection under the above mentioned act.

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The enclosed "Notice of Sale Under Power" is a copy of the advertisement sent to The Champion Newspaper for publication.

**BE GOVERNED ACCORDINGLY.**

**McCurdy & Candler, LLC**

Attorneys for The Bank of New York Mellon  
Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor  
to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2 and  
GMAC Mortgage, LLC

awilby

THIS LAW FIRM IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A  
DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

