Docket #9866 Date Filed: 4/26/2016

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE RESIDENTIAL CAPITAL, LLC, *et al.*, Debtors.	Case No. 12-12020 (MG) Chapter 11 Jointly Administered

DECLARATION OF MARK A. STRAUSS IN SUPPORT OF FINAL APPROVAL OF PROPOSED *ROTHSTEIN* CLASS ACTION SETTLEMENT (CLAIM NOS. 4074 AND 3966), PLAN OF ALLOCATION, AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND INCENTIVE AWARDS FOR NAMED PLAINTIFFS

I, MARK A. STRAUSS, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a member of the law firm of Kirby McInerney LLP, counsel for Named Plaintiffs Landon Rothstein, Jennifer Davidson, Robert Davidson, and Ihor Kobryn ("Plaintiffs") in connection with Plaintiffs' Bankruptcy Proofs of Claim[1] and the related lawsuit brought by Plaintiffs in the District Court, *i.e.*, *Landon Rothstein et al., v. GMAC Mortgage, LLC, et al*., No. 12-cv-3412 (AJN) (S.D.N.Y.) (the "*Rothstein* Action."). I was actively involved in the prosecution and resolution of the Bankruptcy Proofs of Claim and in the prosecution of the *Rothstein* Action, am intimately familiar with each of those proceedings, and have personal knowledge of the matters set forth herein based upon my close supervision and active participation in such prosecution.[2]

2. I respectfully submit this Declaration in support of Plaintiffs' motion pursuant to Fed. R. Bankr. P. 7023 and 9019 for final approval of the class action Settlement and Plan of Allocation. I also submit this Declaration in support of the motion by Plaintiffs' Counsel, Kirby

[1] Plaintiffs' Bankruptcy Proofs of Claim are Claim No. 4074 against GMAC Mortgage, LLC ("GMACM") and Claim No. 3966 against Residential Capital, LLC.

[2] All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Rothstein Plaintiffs, dated December 29, 2015 (the "Stipulation"), which is attached as Exhibit 1 to the Declaration of Mark A. Strauss dated January 11, 2016, which was filed with the Court on January 11, 2016. *See* Doc. 9491-2.

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McInerney LLP, and Plaintiffs' Special Bankruptcy Counsel, Hogan McDaniel (collectively, "Class Counsel"), for an award of attorney's fees and reimbursement of expenses incurred in connection with the filing, prosecution and resolution of Plaintiffs' Bankruptcy Proofs of claim and the filing and prosecution of the claims against GMACM and Ally in the *Rothstein* Action.

I. THE BENEFITS OF THE SETTLEMENT TO THE CLASS

3. Plaintiffs are residential mortgagors whose loans were serviced by GMACM and who were charged by GMACM for Lender-Placed Insurance ("LPI"). Plaintiffs claimed that GMACM — together with certain other defendants named in the *Rothstein* Action, *i.e.*, the Balboa Defendants — perpetrated a scheme to overcharge Plaintiffs for LPI in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq*. ("RICO"), and applicable state law.

4. The Settlement resolves Plaintiffs' Bankruptcy Proofs of Claim in exchange for an allowed unsecured claim not subject to subordination, represented by Claim No. 4074, in the amount of $13 million, against GMACM.[3]

5. The face value of the Allowed Claim is equal to 16% of the approximately $80 million in aggregate out-of-pocket losses that Plaintiffs' Counsel, assisted by Plaintiffs' Forensic Accounting Expert, estimate were suffered by the Class as a result of the alleged scheme.

6. The Allowed Claim will be an "Allowed Borrower Claim" in Class GS-5, as set forth in the Chapter 11 Plan. Such claims are estimated under the Disclosure Statement to yield a $0.30 per $1.00 recovery from the Borrower Claims Trust. Given this payout rate, the Allowed Claim is expected to yield a distribution by the Borrower Claims Trust to Plaintiffs and the Class of $3.90 million.

[3] Claim No. 3966 will be disallowed and expunged on the Settlement Effective Date.

7. Plaintiffs and Class Counsel believe that the Settlement represents an excellent result for the Class. It establishes a non-reversionary common fund which will be distributed to qualified Class Members. Accordingly, the Class will receive cash, and not coupons or *cy pres* relief as in many consumer class action settlements.

8. Furthermore, Class Members will not be required to file claims. Rather, Plaintiffs' Counsel, with the assistance of Plaintiffs' Forensic Accounting Expert, has already identified each Class Member and determined their respective Recognized Losses. This was accomplished through computerized, algorithmic analysis of loan payment data and LPI records of GMACM (the "Class Data") that were supplied by the Liquidating Trust. Under the Plan of Allocation, Class Members whose allocation of the Net Settlement Fund is $10 or more, as calculated from the Class Data, will receive a distribution without having to do anything. By this procedure, it is anticipated that, once the Settlement is finally approved, the Borrower Claims Trust distributes the Distribution Amount to the Escrow Agent, and the Court enters the Class Distribution Order, the Settlement Administrator will issue approximately 61,788 distribution checks to qualified Class Members.

9. Hence, Class Members will participate in the Settlement to the fullest extent possible. There is no question that Settlement Class Members will receive a significant recovery in this case.

10. The Settlement is exemplary compared to other recent LPI class action settlements, which almost uniformly have been "claims made," and did not involve a common fund.[4] In those cases, there has been no assurance that the defendants would pay any material

[4] *See, e.g., Casey. v. Citibank*, No. 12 Civ. 00820, Settlement Agreement and Release, ECF. No. 144-4, at 7 (N.D.N.Y. Feb. 5, 2014; *Diaz v. HSBC Bank USA, et a*l., No. 13 Civ. 21104, Stipulation and Settlement Agreement, ECF No. 101-1, at 8 (S.D. Fla. Feb. 28, 2014; *Fladell et al., v. Wells Fargo Bank, et al*., No. 13 Civ. 60721, **[footnote continued on next page]**

consideration apart from the plaintiffs' attorneys' fees. Understandably, many of those settlements have been challenged as collusive and unfair.[5]

11. In comparison, only a single Class Member has opted out of, or objected to, the Settlement in this case to date.

12. The Settlement is also an excellent result in light of the difficulties that Plaintiffs and the Class faced in proving their claims. GMACM vigorously denied liability, and had numerous potentially availing defenses, including that: (i) Plaintiffs' claims were barred by the filed-rate doctrine; (ii) the proposed class did not meet the requirements of Bankruptcy Rule 7023; and (iii) Plaintiffs failed adequately to allege, and could not prove, their RICO claims.

13. Indeed, in *Rothstein v. Balboa Ins. Co.*, 794 F.3d 256 (2d Cir. 2015), the Second Circuit held that the filed-rate doctrine barred Plaintiffs' claims against the Balboa Defendants, *i.e.*, GMACM's former co-defendants in the *Rothstein* Action. Those claims were essentially identical to those asserted by Plaintiffs against GMACM. Accordingly, had there been no Settlement, it is highly likely that the Court would have determined that this binding authority mandated dismissal of the Bankruptcy Proofs of Claim.

14. Additionally, the Settlement was reached only after extensive litigation by Plaintiffs in both the District Court and the Bankruptcy Court, and after months of arm's-length, vigorous negotiations between the Settling Parties.

Stipulation and Settlement Agreement, ECF No. 158-1, at 24 (S.D. Fla. Mar. 5, 2014; *Saccoccio v. JP Morgan Chase Bank*, No. 13 Civ. 21107, Stipulation and Settlement Agreement, ECF No. 59-1, at 23 (S.D. Fla. Sept. 6, 2013; *Hall v. Bank of Am., et al*., No. 12 Civ. 22700, Settlement Agreement, ECF No. 376-1, at 22 (S.D. Fla. Apr. 3, 2014).

[5] *See Casey*, No. 12 Civ. 820, Campbell Objection, ECF No. 183, at 11 (N.D.N.Y July 7, 2014); *Diaz*, No. 13 Civ. 21104, Kirktindoll Objection, ECF No. 165, at 12 (S.D. Fla. Aug. 27, 2014); *Fladell*, No. 13 Civ. 60721, Vanskyock Objection, ECF No. 193, at 5 (S.D. Fla. Aug. 19, 2014); *Saccoccio*, No. 13 Civ. 21107, Aquino Objection, ECF No. 97, at 5 (S.D. Fla. Jan. 15, 2014); *id*., Pearson Objection, ECF No. 93, at 9 (S.D. Fla. Jan. 13, 2014); *Hall*, No. 12 Civ. 22700, Trapasso Objection, ECF No. 412, at 2 (S.D. Fla. Sept. 26, 2014).

II. THE COURT'S PRELIMINARY APPROVAL ORDER AND PLAINTIFFS' DISSEMINATIONOF PRE-HEARING NOTICE

15. Plaintiffs moved for preliminary approval of the Settlement on January 11, 2016. *See* Doc. 9491. On February 9, 2016, Plaintiffs filed a certificate of no objection, and the Court issued the Order Preliminary Approving Proposed Settlement with the *Rothstein* Plaintiffs (the "Notice Order") (annexed as Exhibit A hereto). *See* Docs., 9606, 9609.

16. In the Notice Order, the Court made the following findings, determinations, and directives, among others:

a. granting preliminary approval of the Settlement as sufficiently fair, reasonable and adequate to warrant dissemination of notice to the Class and a hearing on the fairness of the Settlement;

b. certifying the Settlement Class for settlement purposes, appointing the Named Plaintiffs as class representatives, and appointing Plaintiffs' Counsel, Kirby McInerney LLP, as counsel for the Settlement Class;

c. scheduling a hearing (the "Final Approval Hearing") for May 24, 2016, at 10:00 a.m., to consider, among other things, whether the Proposed Settlement is fair, reasonable, and adequate and should be finally approved; whether the proposed Plan of Allocation is fair and reasonable and should be approved; whether the Final Approval Order as provided under the Stipulation should be entered; whether the application by Class Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses should be granted; and whether Class Counsel's application for incentive awards for the Named Plaintiffs should be granted;

d. approving the form, substance and requirements of the notice of the proposed Settlement, including the Notice, the Summary Direct U.S. Mail Postcard Notice, and the Publication Notice;

e. appointing KCC Class Action Services ("KCC") as the Settlement Administrator to administer the notice program and Settlement under the supervision of Plaintiffs' Counsel, and directing that the notices be disseminated; and

f. establishing procedures and deadlines for Class Members to exclude themselves from or to object to the Settlement, Plan of Allocation, or the attorneys' fees and reimbursement of expenses requested by Class Counsel.

17. Annexed hereto as Exhibit B is the Declaration of Jay Geraci on behalf of KCC regarding the notice procedures conducted in this case, dated April 25, 2016 (the "KCC Decl.").[6] In his Declaration, Mr. Geraci attests to, among other things, the efforts made to disseminate the Notice, the Publication Notice, and the Summary Direct U.S. Mail Postcard Notice, all in compliance with the Notice Order. KCC Decl. ¶¶ 5.

18. The Notice contains a thorough description of the Settlement and the proposed Plan of Allocation. *See* KCC Decl. Ex. A. The Notice also apprises Class Members of their rights to participate in the Settlement, to object to the Settlement, the Plan of Allocation or the application for attorneys' fees and expenses, or to exclude themselves. *See id.* The Notice also informs Class Members of the intention of Class Counsel to apply for an award of attorneys' fees in an amount that will not exceed 35% of the Settlement Fund, and for reimbursement of expenses in the approximate amount of $250,000. *See id*.

19. The Notice fairly apprises Class Members of their rights with respect to the Settlement and therefore is the best notice practicable under the circumstances, and complies with the Court's Notice Order, Federal Rule of Civil Procedure 23, and due process.

20. As Mr. Geraci attests, KCC caused 143,973 copies of the Summary Direct U.S. Mail Postcard Notice to be mailed to those persons whose names appear on the Class Member List provided by the Borrowers Claims Trust pursuant to the Notice Order.[7] *See* KCC Decl. ¶ 15.

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[6] KCC serves in two capacities in connection with this Settlement. In addition to being the Court-approved Settlement Administrator, KCC has been Plaintiffs' Database Hosting Provider in connection with the storage and analysis of the Class Data, as described more particularly in Mr. Geraci's declaration and below.

[7] As described in the Stipulation and the Notice, the Liquidating Trust initially produced the Class Data to KCC in anonymized form, *i.e.*, each borrower was assigned a unique identifying number, with all Personally Identifiable Information ("PII"), including names, mailing addresses, property addresses, and loan account numbers removed. *See* Doc. 9491-3, Strauss Decl. Ex. 1 at ¶ 28. On or about February 14, 2016, KCC generated a computerized list of the anonymized numbers corresponding to the Settlement Class Members as determined from the Class Data. KCC caused such list to be provided it to the Borrower Claims Trust on behalf of Plaintiffs in accordance with the Notice **[footnote continued on next page]**

Before causing this mailing, KCC caused the addresses in the Class Member List to be updated using the National Change of Address system, which updates addresses for all people who had moved during the previous four years and filed a change of address with the U.S. Postal Service. New addresses were found for 10,581 Class Members. The Class Member List was updated with these new addresses. *See* KCC Decl. ¶¶ 10, 16-20.

21. In order to provide Class Members with information concerning the Settlement, as well as downloadable copies of the Notice, KCC also established a dedicated website, www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com. *See* KCC Decl. ¶ 13.

22. KCC also caused the Publication Notice to be published in the USA Today on February 23, 2016 and transmitted over the PR Newswire on February 23, 2016. *See* KCC Decl. ¶ 14.

23. KCC also caused an Interactive Voice Response system to be established at a toll-free number (844-830-5220) to provide information about the Settlement and to record requests for copies of the Notice. *See* KCC Decl. ¶ 12.

24. As directed by the Court, Plaintiffs' Counsel has actively monitored the progress of the notice program through telephone and conferences and email communications with KCC. Accordingly, Plaintiffs' Counsel has been able to monitor the: (i) the number of copies of the Summary Direct U.S. Mail Postcard Notice mailed by KCC, (ii) the number of copies of the Summary Direct U.S. Mail Postcard Notice re-mailed to updated addresses; (iii) the number of copies of the Summary Direct U.S. Mail Postcard Notice returned as undeliverable; and (iv) the number of exclusions requested.

Order. *See* KCC Decl. ¶¶ 7-8, 10. On or about February 19, 2016, the Borrower Claims Trust provided KCC with a computerized list of the Settlement Class Members in de-anonymized form, *i.e.*, the Class Member List.

25. To date, 143,973 copies of the Summary Direct U.S. Mail Postcard Notices have been mailed by KCC, 24,358 have been re-mailed to an updated address, 1,904 have been returned as undeliverable, and 1 valid request for exclusion have been received.

26. Plaintiffs' Counsel has also established a team of paralegals to handle inquiries about the Settlement from Settlement Class Members. To date, the team has handled approximately 4,605 contacts from Class Members and provided copies of the Notice to 395 Class Members.

III. THE SUBSTANCE OF PLAINTIFFS' CLAIMS

27. Plaintiffs initially asserted their claims against GMACM in the *Rothstein* Action which was filed on April 30, 2012. *See Rothstein* ECF No. 1. In their 44-page complaint, Plaintiffs claimed that GMACM and the Balboa Defendants[8] perpetrated a fraudulent scheme in violation of RICO to overstate GMACM's LPI costs, and, thereby, to recoup inflated reimbursements from Plaintiffs, who were obligated to indemnify those costs under their mortgages. Plaintiffs alleged that the Balboa Defendants gave GMACM secret premium "rebates, *i.e.*, kickbacks," but that GMACM nevertheless charged Plaintiffs and the Class based on the full premiums. *See id.*, ECF Nos. 1, 25, 39 at ¶¶ 17-22. Plaintiffs further alleged that the defendants concealed the rebates/kickbacks by funneling them through certain related-party transactions. In particular, under an undisclosed agreement between Newport and GMACM, Newport provided GMACM with millions of dollars in outsourced services at no charge. Meanwhile, Balboa and Meritplan secretly compensated Newport for the provision of such

[8] The Balboa Defendants consisted of GMACM's LPI carriers, Balboa Insurance Company ("Balboa") and Meritplan Insurance Company ("Meritplan"), and their affiliate, Newport Management Corporation ("Newport"). *See* Doc. 9491-3 at 3; *Rothstein* ECF No. 39, at 8-9.

services through "intercompany expense allocations" which were derived from GMACM's LPI premiums. *See id.*, ECF No. 39 at ¶¶ 9, 71, 74, 257, 263.

28. Plaintiffs alleged that the services that Newport provided to GMACM constituted undisclosed, in-kind rebates conferred by the Balboa Defendants as a *quid pro quo* for GMACM's agreement to purchase its LPI exclusively from Balboa and Meritplan. Plaintiffs further alleged that, in light of the rebates, GMACM paid less than the full premiums for the LPI, yet had no right under the mortgages to be indemnified more than it actually spent. Plaintiffs thus alleged that the rebates, which materially reduced GMACM's expense, should have been deducted from what Plaintiffs were charged. *See Rothstein*, ECF No. 39 at ¶¶ 7, 69, 83, 113, 118, 272, 318.

29. On May 14, 2012, two weeks after Plaintiffs commenced the *Rothstein* Action, GMACM and certain of its affiliates filed this Chapter 11 Bankruptcy proceeding.

30. Following the bankruptcy filing, on September 28, 2012, Plaintiffs filed a 91-page First Amended Class Action Complaint in the *Rothstein* Action. On January 22, 2013, Plaintiffs filed a 108-page Second Amended Complaint (the "SAC") in the *Rothstein* Action. *See Rothstein* ECF Nos. 25, 39.

31. In their amended pleadings, Plaintiffs withdrew their claims against GMACM due to the automatic stay in the bankruptcy. However, Plaintiffs named GMACM's non-debtor affiliates, Ally Bank ("Ally Bank") and Ally Financial, Inc. ("AFI") (collectively, "Ally"), as new defendants based on theories of veil-piercing, alter-ego liability, and agency law. *See Rothstein*, ECF No. 39, at ¶ 190.

32. Specifically, Plaintiffs alleged that AFI exercised "complete domination and control" over GMACM such that piercing the corporate veil and holding AFI responsible for

GMACM's conduct was warranted. In support of their veil piercing allegations, Plaintiffs set forth more than a hundred paragraphs of allegations.[9] Plaintiffs alleged that AFI, through its dominion and control over GMACM, caused GMACM to engage in the subject unlawful conduct alleged, thereby misusing GMACM's corporate form to perpetrate a fraud upon and injure Plaintiffs and the Class. *See Rothstein* ECF No. 39, at ¶ 147.

33. As for Ally Bank, Plaintiffs alleged that, in committing the misconduct alleged, GMACM and Newport had been acting in the course and scope of their authority as the agent and sub-agent, respectively, of Ally Bank, which had contracted with GMACM to service approximately 690,000 loans. Plaintiffs further alleged that Ally Bank was aware of or recklessly disregarded GMACM's misconduct, while ratifying, and retaining the fruits, thereof. Plaintiffs alleged that the fact that Ally Bank paid GMACM below-market rates for GMACM's loan servicing services, as admitted by the Debtors, raised an inference of *scienter* against Ally Bank. *See Rothstein* ECF No. 39, at ¶¶ 21, 66, 141.

IV. RELEVANT PROCEDURAL HISTORY

A. The *Rothstein* Action

34. As set forth above, Plaintiffs filed their 44-page initial complaint in the *Rothstein* Action on April 30, 2012, their 91-page First Amended Class Action Complaint on September 28, 2012, and their 108-page SAC on January 22, 2013. *See Rothstein* ECF Nos. 1, 25, and 39.

[9] Plaintiffs alleged, *inter alia*, that: (i) AFI conducted the affairs of GMACM as part of a "'vertically integrated single enterprise'"; (ii) AFI caused GMACM to file for Bankruptcy; (iii) prior to the bankruptcy petition, AFI had improperly stripped ResCap, GMACM's parent, of billions of dollars of assets; (iv) AFI admitted that it controlled GMACM in public filings and regulatory consent orders; (v) AFI shared resources, management and employees with ResCap and GMACM; (vi) AFI disregarded corporate formalities in dealing with ResCap and GMACM, treating them as "business units" rather than separate entities; and (vii) AFI had agreed with regulators to monitor and control the activities of GMACM to ensure compliance with applicable law. *See Rothstein* ECF No. 39, at ¶¶ 147-242.

35. On February 25, 2013, the Balboa Defendants moved to dismiss the SAC. *See Rothstein* ECF No. 43. The Balboa Defendants' motion raised numerous issues that were potentially dispositive of Plaintiffs' claims against the Balboa Defendants' alleged co-conspirator, GMACM. For example, the Balboa Defendants argued that the filed-rate doctrine barred Plaintiffs' claims, and that the SAC inadequately pled any RICO violations.[10] *See Rothstein* ECF No. 44. The Balboa Defendants also maintained that any alleged fraud was committed by GMACM, not by the Balboa Defendants. *Id*. at 2-3, 12-20.

36. On March 25, 2013, Plaintiffs filed a 35-page brief in opposition to the motion to dismiss. *See Rothstein* ECF No. 50.

37. On September 30, 2013, the District Court denied the motion. Judge Alison J. Nathan held that the filed-rate doctrine did not apply and that the SAC adequately pled RICO violations. *See Rothstein* ECF No. 58.

38. The Chapter 11 Plan was filed on August 23, 2013.

39. On March 5, 2014, in light of the Third Party Releases in the Chapter 11 *Plan*, Plaintiffs voluntarily dismissed their claims against Ally. By this time, however, as described in detail below, Plaintiffs had reached an agreement in principle with the Settling Debtors to resolve Plaintiffs' Bankruptcy Proofs of Claim, and were working toward the finalization of the Settlement.

40. On June 25, 2014, the Second Circuit granted a petition previously filed by the Balboa Defendants for interlocutory appeal of the District Court's decision denying the motion to dismiss.

[10] Plaintiffs agreed to stay their claims against Ally pending a ruling on the motion filed by Ally in the bankruptcy pursuant to Section 362 of the Bankruptcy Code to stay and enjoin those claims. *See Rothstein* ECF No. 112.

41. On July 22, 2015, after extensive briefing, the Second Circuit reversed the District Court. Specifically, the Second Circuit held that the filed-rate doctrine barred Plaintiffs' claims, and reversed and remanded for dismissal. *See Rothstein*, 794 F.3d at 259, 262-64.

B. The Bankruptcy Proceeding

42. On November 9, 2012, Plaintiffs, on behalf of themselves and the putative class, filed their Bankruptcy Proofs of Claim. In the Bankruptcy Proofs of Claim, Plaintiffs asserted the same claims against GMACM that Plaintiffs previously had pled against GMACM in the *Rothstein* Action.

43. On December 21, 2012, Ally filed a motion (which was subsequently joined by the Debtors) requesting a determination that the claims pled against Ally in the *Rothstein* Action were stayed and enjoined pursuant to Section 362 of the Bankruptcy Code. *See* Docs. 2511, 2793.

44. On or about February 25, 2013, Plaintiffs' Counsel associated with Plaintiffs' Special Bankruptcy Counsel, the law firm of Hogan McDaniel, to assist Plaintiffs' Counsel in understanding and navigating the relevant bankruptcy issues and procedures, and in litigating and collecting on Plaintiffs' claims against the Debtors in the bankruptcy.

45. On April 2, 2013, Plaintiffs filed a 22-page opposition to Ally's motion to stay and enjoin and a cross-motion for relief from any applicable stay. *See* Doc. 3343. In their opposition, Plaintiffs submitted that their claims against Ally were direct and personal, not derivative or otherwise property of the estate, and, hence, were not stayed by Section 362. *See id*.

46. On June 26, 2013, the Court approved the Debtors' entry into the plan support agreement with the Committee, Ally, and other parties. *See* Doc. 4098.

47. On August 28, 2013, Ally, the Debtors, and the Committee filed an amended motion seeking an extension of the automatic stay to enjoin the claims pled against Ally in the

Rothstein Action. *See* Doc. 4871. Shortly before Plaintiffs' objection deadline, the matter was adjourned by agreement of the parties until the Plan confirmation hearing of the Chapter 11 Plan.

48. On June 12, 2013 and July 10, 2013, respectively, the Court held status conferences with the parties. Appearing at those conferences, Plaintiffs' Counsel sought to familiarize the Court with the nature of Plaintiffs' claims and theories against Ally, and to explain Plaintiffs' position that those claims were direct and not derivative.

49. On August 8, 2013, Plaintiffs filed an Objection and Reservation of Rights (the "Objection and Reservation") with respect to the proposed plan. *See* Doc. 4578. Plaintiffs stated that they intended to object to the proposed plan to the extent that it enjoined Plaintiffs from prosecuting their claims against Ally. Plaintiffs also submitted that the proposed Third Party Releases were improper because insufficient funding was provided for the release of borrower claims. *See id*.

50. On August 23, 2013, the proposed Chapter 11 Plan was filed.

51. In or around July 2013, Plaintiffs' Counsel began to discuss a potential settlement of Plaintiffs' Bankruptcy Proofs of Claim with counsel for the Settling Debtors and counsel for the Committee. After much back and forth, these discussions culminated in a nearly day-long, arm's-length, face-to-face negotiation session on September 9, 2013, between Plaintiffs' Counsel and Counsel for the Settling Debtors. An in-house representative of GMACM attended. Counsel for the Committee was also present and greatly assisted in the negotiations.

52. The Settling Parties' face-to-face meeting was followed by additional phone calls and email exchanges between Plaintiffs' Counsel and counsel for the Settling Debtors and the Committee.

53. Finally, on September 20, 2013, Plaintiffs' Counsel and the Settling Debtors, with the consent of the Committee, reached an agreement in principle to resolve the claims asserted by Plaintiffs in the Bankruptcy Proofs of Claim. The agreement in principle was memorialized in an exchange of emails.

54. As part of the agreement in principle, Plaintiffs agreed to support confirmation of the Chapter 11 Plan. On December 11, 2013, the Court confirmed the Chapter 11 Plan with Plaintiffs' support. On December 17, 2013, the Plan Effective Date occurred and the Chapter 11 Plan was substantially consummated.

55. Plaintiffs' Counsel also began drafting the Stipulation and associated documentation, including the notices, and proposed orders. Because of the unique nature and structure of the Settlement, a number of issues arose regarding the precise terms and conditions of those documents, necessitating that the Settling Parties confer extensively and exchange multiple drafts. Plaintiffs' Counsel took the laboring oar throughout the drafting process.

56. On January 11, 2016, the Settling Parties executed the Stipulation, thereby formalizing the Settlement. *See* Doc. 9491-3, Strauss Decl. at Exhibit 1.

57. As indicated above, Plaintiffs moved for preliminary approval on January 11, 2016. *See* Doc. 9491. On February 9, 2016, Plaintiffs filed a certificate of no objection, and the Court issued the Notice Order. *See* Docs. 9606, 9609.

V. PLAINTIFFS' COUNSEL'S SUCCESSFUL EFFORTS TO OBTAIN, AND TO IDENTIFY THE CLASS MEMBERS AND DETERMINE THEIR RECOGNIZED LOSSES FROM, THE CLASS DATA

58. As part of the parties' agreement in principle to resolve Plaintiffs' Bankruptcy Proofs of Claim, the Settling Debtors agreed to produce to Plaintiffs data and business records (to the extent that such information was within the Debtors' control or reasonably available from the Debtors' successors) regarding GMACM's LPI transactions and the payment histories of

mortgagors, *i.e.*, the Class Data. Plaintiffs' Counsel's goal was to identify the members of the Class and determine their Recognized Losses from GMACM's own records.

59. Plaintiffs' Counsel and the Settling Debtors engaged in extensive negotiations and discussions between October 2013 and June 2014 over the production of the Class Data. The discussions were highly technical in nature. Plaintiffs' Counsel engaged Plaintiffs' Forensic Accounting Expert to advise Plaintiffs' Counsel and to help in the negotiations. Numerous, lengthy conference calls were held. Plaintiffs' Forensic Accounting Expert actively participated and advised Plaintiffs' Counsel. The Settling Debtors were at all times very cooperative with Plaintiffs' Counsel in conferring with respect to the Class Data. Through this conferral process, Plaintiffs' Counsel and Plaintiffs' Forensic Accounting Expert developed a deep understanding of GMACM's LPI procedures and the characteristics of the databases on which the relevant borrower data were accessible.

60. On February 11, 2014, the Settling Parties filed a Stipulation and Order of Confidentiality to protect the PII of Class Members in any Class Data produced. *See* Doc. 6462.

61. In or about June 2014, the Liquidating Trust, pursuant to a cooperation agreement it maintains with the Borrower Claims Trust, produced the Class Data to Plaintiffs' Counsel. Plaintiffs' Counsel caused the Class Data to be loaded onto the computer system of Plaintiffs' Database Hosting Provider, KCC, for analysis. The Class Data were voluminous, consisting of in excess of 8.5 gigabytes of information.

62. In the weeks that followed, Plaintiffs' Counsel, assisted by Plaintiffs' Forensic Accounting Expert, conducted extensive computerized analysis of the Class Data. Such analysis involved the development of an algorithm to iterate through the borrower loan payment histories, making requisite calculations. Plaintiffs' Counsel developed the algorithm with the assistance of

Plaintiffs' Forensic Accounting Expert. KCC's programmers scripted the algorithm and ran it on the Class Data. Through this process, approximately 143,973 borrowers were identified as members of the Settlement Class, and the sum of money that GMACM recouped or recovered for LPI from each member of the Settlement Class was determined.[11]

63. The Class Data have been, and continue to be, critical to the effectuation of the Settlement. Because the Class Members have been identified based on the Class Data, it was possible to send a copy of the Summary Direct U.S. Mail Postcard Notice to each Class member. *See* KCC Decl. ¶ 15. As explained below, the Class Data have also enabled the development of a Plan of Allocation based on each Class member's proportional loss. *See* Section IX, *infra*. The Class Data will also enable the allocation and distribution of the Net Settlement Fund to Class Members. Accordingly, because of the Class Data, the Class is able to participate in the Settlement to the fullest extent possible.

64. Notably, prior to the Second Circuit's ruling in the *Rothstein* Action that Plaintiffs' claims were barred by the filed-rate doctrine, which was not until July 2015, Plaintiffs' Counsel anticipated that the Class Data would be tremendously useful in supporting Plaintiffs' planned motion for class certification in the *Rothstein* Action. Plaintiffs' Counsel planned to cite the Class Data to establish that the proposed class was manageable and that the class was ascertainable.[12] Plaintiffs' Counsel also anticipated that the proceeds of any settlement

[11] Less than 1% of the borrower payment histories could not be analyzed by computer due to payment-posting errors and other discrepancies. *See* Doc. 9491-3, Strauss Decl. Ex. 1 at 16. Those transactions involved only 2,997 borrowers. *Id*. Under the Stipulation, those borrowers are deemed to be Class Members, and, for purposes of the Plan of Allocation, it is assumed that GMACM recouped or recovered 42.5% of their LPI charges, reflecting the overall rate at which GMACM recouped or recovered LPI charges from Class Members in the aggregate during the Class Period. *See* Doc. 9491-3, Strauss Decl. Ex. 1, at ¶ 30.

[12] Class certification in other LPI cases had been denied in the past for failure to so establish. *See, e.g.*, G*ooden v. SunTrust Mortgage, Inc.*, No. 11 Civ. 02595 (JAM), 2013 WL 6499250 (E.D. Cal. Dec. 11, 2013); *Longest v. Green Tree Servicing LLC*, 308 F.R.D. 310 (C.D. Cal. 2015).

or recovery in the *Rothstein* Action would be combined with the proceeds of the instant Settlement, and allocated and distributed together in an efficient manner based on the Class Data. Accordingly, Plaintiffs' Counsel strongly believed that the time and expense associated with obtaining and analyzing the Class Data were in the best interests of the Class, even independent of the benefits to the Class in connection with the Settlement.

VI. PLAINTIFFS' COUNSEL'S INVESTIGATION

65. Plaintiffs' Counsel conducted an extensive investigation of the facts and legal principles relating to Plaintiffs' claims prior to reaching the Settlement. Plaintiffs' Counsel's investigation included the review and analysis of hundreds of pages of transcripts, including testimony of representatives of GMACM and the Balboa Defendants, from hearings on LPI conducted by the New York State Department of Financial Services (the "NYDFS") in May 2012.

66. Plaintiffs' Counsel also filed requests with the NYDFS for disclosure under New York's Freedom of Information Law. Plaintiffs' Counsel thereby obtained hundreds of pages of documents relating to GMACM and the Balboa Defendants which Plaintiffs' Counsel also reviewed and analyzed.

67. Plaintiffs' Counsel also gathered, reviewed and analyzed numerous relevant documents from available public sources, including public filings, media reports and other materials. Plaintiffs' Counsel also conferred with a confidential witness who previously worked in the LPI industry.

68. Plaintiffs' Counsel also conducted extensive research and investigation into the legal foundation of Plaintiffs' claims prior to reaching the Settlement. As described above, Plaintiffs' Counsel prepared and filed Plaintiffs' 44-page initial complaint, 91-page First Amended Class Action Complaint, and 108-page SAC in the *Rothstein* Action. Plaintiffs'

Counsel thoroughly researched the legal bases for the causes of action therein prior to filing those pleadings. Plaintiffs' Counsel also thoroughly researched the theories of recovery that Plaintiffs asserted against Ally, *i.e.*, veil-piercing, alter-ego liability, and agency.

69. Plaintiffs' Counsel also researched, prepared and filed Plaintiffs' 35-page brief in opposition to the Balboa Defendants' motion to dismiss. As described above, that motion involved issues that were potentially dispositive of Plaintiffs' Bankruptcy Proofs of Claim, including whether the filed-rate doctrine applied and whether Plaintiffs' RICO allegations were sufficient. As a measure of the persuasiveness of Plaintiffs' Counsel's brief in opposition — and the thoroughness of the research that it reflected — the District Court denied the motion in a 34-page decision, *see Rothstein* ECF No. 58, although the Second Circuit later reversed the District Court, remanding for dismissal, as described above, *see Rothstein* ECF No. 118.

70. Plaintiffs' Counsel also researched, prepared and filed Plaintiffs' 22-page brief in opposition to Ally's motion to stay Plaintiffs' claims against Ally pursuant to Section 362, and in support of Plaintiffs' cross-motion for relief from any stay. Plaintiffs' Counsel worked closely with Plaintiffs' Special Bankruptcy Counsel to research and draft these papers, and to develop an understanding of the bankruptcy issues and devise a strategy for maximizing Plaintiffs' recovery from the Debtors.

VII. ASSESSMENT OF STRENGTHS AND WEAKNESSES

71. Plaintiffs believe they could well have prevailed on the merits of the claims set forth in the Bankruptcy Proofs of Claim. The Settling Defendants were just as adamant that Plaintiffs would fail. Having considered Plaintiffs' claims, and evaluated the Settling Defendants' defenses, it is the informed judgment of Plaintiffs' Counsel, based upon all proceedings to date and their extensive experience in litigating class actions, that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class. Indeed,

Plaintiffs' Counsel believes that the Settlement is exceptional under all the circumstances. At minimum, the Settlement appropriately balances the risks, costs, and delay inherent in continuing to prosecute the Bankruptcy Proofs of Claim, falls within the range of reasonableness, and warrants approval.

72. Plaintiffs' Counsel's endorsement of the Settlement is informed by a thorough understanding of the strengths and weaknesses of the claims and defenses. Plaintiffs' Counsel's understanding was gained through Plaintiffs' Counsel's factual and legal investigation, as well as Plaintiffs' extensive litigation in the District Court and this Court, as set forth above. Plaintiffs' Counsel additionally considered the benefit to Class Members under the terms of the Stipulation.

73. Plaintiffs faced significant risks were they to continue to prosecute the Bankruptcy Proofs of Claim.

74. There was also a risk that the filed-rate doctrine barred Plaintiffs' claims. Indeed, the Second Circuit, reversing the District Court in the *Rothstein* Action, held that the filed-rate doctrine barred Plaintiffs' claims against the Balboa Defendants. *See Rothstei*n, 794 F.3d at 259, 262-64. As described above, those claims arose out of the same transactions as Plaintiffs' claims against GMACM. Accordingly, had there been no Settlement, it is highly likely that the Court would have determined that Second Circuit's decision mandated dismissal of the Bankruptcy Proofs of Claim. Had this occurred, the Class would have received nothing.

75. The uncertain outcome of the Balboa Defendants' motion to dismiss in the *Rothstein* Action also loomed as a large risk. That motion — which, as described above, involved issues that were potentially dispositive of the Bankruptcy Proofs of Claim (*see Rothstein* ECF No. 44) — was fully briefed and pending at the time that Class Counsel was attempting to negotiate the Settlement. Class Counsel was keenly aware that, were the District

Court to grant the motion, it very likely would have torpedoed Plaintiffs' chances of getting any settlement from the Debtors, and rendered the Bankruptcy Proofs of Claim of little or no value. Plaintiffs' Counsel therefore sought to mitigate this risk by trying to reach the agreement in principle prior to the District Court's issuing its decision. As indicated above, the Settling Parties reached their agreement in principle just *three weeks* before the District Court decision came out. *Id.*, *Rothstein* ECF No. 58.

76. Plaintiffs also faced a large risk that the Court would refuse to certify the proposed nationwide Class which Plaintiffs sought. Numerous courts have declined class certification in LPI cases or limited the proposed class to a single state.[13] Had class certification been denied, any Class Members who timely filed proofs of claim in the Bankruptcy would have been forced to proceed individually. Other Class Members (presumably the vast majority) would have been barred by the Chapter 11 Plan releases.

77. Plaintiffs also faced risks with respect to the applicable statutes of limitations. Had Plaintiffs been unable to prove their equitable tolling allegations, which GMACM was likely to dispute, the Class Period and recoverable damages would have been substantially reduced.

78. Plaintiffs also would have been hampered by the fact that much of their case depended on the testimony of hostile witnesses – employees of GMACM and of the Balboa Defendants.

[13] *See Gooden v. Suntrust Mortg., Inc.*, No. 11 Civ. 02595, 2013 WL 6499250, at *9 (E.D. Cal. Dec. 11, 2013) (denying certification); *Gustafson v. BAC Home Loans Serv., LP*, 294 F.R.D. 529, 550 (C.D. Cal. 2013) (same); *Gordon v. Chase Home Fin., LLC*, No. 11 Civ. 2001, 2013 WL 436445, at *12 (M.D. Fla. Feb. 5, 2013) (same); *Kunzelmann v. Wells Fargo Bank, N.A.*, No. 11 Civ. 81373, 2013 WL 139913, at *13 (S.D. Fla. Jan. 10, 2013) (same); *Lane v. Wells Fargo Bank*, N.A., No. 12 Civ. 04026, 2013 WL 3187410, at *16 (N.D. Cal. June 21, 2013) (certifying only single-state class); *Williams v. Wells Fargo Bank*, N.A., 280 F.R.D. 665, 675 (S.D. Fla 2012) (same).

79. Plaintiffs also faced substantial risks in proving damages. "In class actions, the 'complexities of calculating damages increase geometrically.'" *Chatelain v. Prudential-BACHE Sec., Inc*., 805 F. Supp. 209, 214 (S.D.N.Y. 1992) (citation omitted); *see In re Michael Milken and Assoc. Sec. Litig*., 150 F.R.D. 46, 54 (S.D.N.Y. 1993) (observing that proving damages often becomes a "battle of experts . . . with no guarantee of the outcome"). Here, establishing damages required expert analysis of literally millions of borrower transactions. Plaintiffs analyzed the subject transactions in connection with the Settlement, as set forth above. Without the willing cooperation of the Settling Defendants, however, it is highly doubtful that this difficult task could have been achieved.

80. Another risk that Plaintiffs faced was the need to rely on expert witnesses. To establish liability and damages, expert testimony was essential. The acceptance of expert testimony by courts, however, is always far from certain, regardless how distinguished the source. The Settlement avoids the risk that the Settling Defendants' competing experts would prevail, resulting in a dispositive finding or ruling against Plaintiffs and the Class.

81. Plaintiffs also faced the risk that they would be unable to prove their RICO claims. Plaintiffs would have had to show that GMACM "participated in a scheme to defraud" and evinced a "specific intent to defraud." *Americana de Vapores, S.A. v. IBJ Schroder Bank & Trust Co*., 785 F. Supp. 411, 424 (S.D.N.Y. 1992) (*citing United States v. Rodolitz*, 786 F.2d 77, 80 (2d Cir. 1986)). Notably, GMACM denied having anything to do with the alleged fraud, blaming the Balboa Defendants — to which GMACM supposedly had "outsourced" the relevant activities — for any alleged wrongdoing. *See Rothstein* ECF No. 39 at ¶ 73.

82. GMACM also would have echoed arguments made by the Balboa Defendants that disclosures included in notices issued to Plaintiffs adequately informed Plaintiffs of the circumstances, and, hence, that no deceptive conduct occurred.

83. Plaintiffs also faced the risk of being unable to establish proximate causation or standing under RICO. *See Hemi Grp., LLC v. City of New York, N.Y.*, 559 U.S. 1 (2010). GMACM would have reiterated the argument made by the Balboa Defendants that Plaintiffs themselves triggered the LPI charges by failing to maintain homeowners' insurance, and, hence, that proximate cause was lacking.

84. Indeed, courts across the country have rendered opinions illustrating the numerous risks associated with mortgagor LPI claims. In *Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098 (11th Cir. 2014), the Eleventh Circuit dismissed lender-placed flood insurance claims brought under Alabama law. The court held that commissions paid by the insurer to the bank did not constitute "kickbacks" because the servicer did not owe a fiduciary duty to the borrowers. *Id.* at 1110. In *Cohen v. American Sec. Ins. Co.*, 735 F.3d 601 (7th Cir. 2013), the Seventh Circuit affirmed a decision dismissing LPI claims holding that there was nothing "'unfair'" or "'deceptive'" about the defendants' allegedly improper LPI practices. *See also Kolbe v. BAC Home Loans Serv., LP*, 738 F.3d 432,454-55 (1st Cir. 2013) (*en banc*) (affirming dismissal of LPI claims because, *inter alia*, the plaintiff "unquestionably received value for the additional cost" paid, bank gave adequate disclosures and warnings, and bank was protecting its "reasonable and legitimate economic interests," and concluding that the plaintiffs' argument that "the only reason Defendants demanded additional flood insurance was an improper effort to self-deal . . . collecting for itself or its affiliates insurance brokerage commissions and excessive premiums" did not pass *Iqbal*'s plausibility standard).

85. Accordingly, the Class faced significant risks, compared to the certain relief provided by the Settlement.

86. Notably, despite facing significant risks, Class Counsel demonstrably outperformed other plaintiffs' attorneys proceeding against GMACM on similar theories. Three other LPI-related class actions were filed against GMACM – *Ulbrich v. GMAC Mortgage, LLC et al.*, No. 11 Civ. 62424 (RNS) (S.D. Fla.), *Cronk v. GMAC Mortgage, LLC*, No. 11 Civ. 05161 (E.D. Pa.), and *Throm v. GMAC Mortgage, LLC*, No. 11 Civ. 06813 (E.D. Pa.).[14] The claims against GMACM in each were stayed pursuant to Section 362 of the Bankruptcy Code. Unlike Class Counsel, however, the plaintiffs' counsel in those cases failed to pursue the matter further – they did not amend their pleadings to name any non-debtor affiliates of GMACM as new defendants, or develop or plead arguably direct, personal and non-derivative theories of recovery against them, or take additional steps to position themselves for maximizing their recoveries in the bankruptcy proceeding, *e.g.*, by declaring their objection to the planned Third Party Releases. Only Class Counsel devoted the time, effort, and expertise necessary to pursue and execute such far more sophisticated strategies, which paid off in the form of the Settlement. In comparison, the putative classes in *Ulbrich*, *Cronk* and *Throm* recovered nothing from GMACM.[15]

87. Additionally, Plaintiffs' Counsel negotiated the Settlement with vigor. During the course of the Settlement negotiations, all parties were represented by experienced counsel who advocated their positions forcefully and with intensity. Moreover, the Settlement discussions were at all times adversarial and conducted at arm's length and with the involvement of counsel

[14] The claims in those cases differed somewhat from those here. The plaintiffs in *Cronk* and *Throm* complained that GMACM force-placed flood insurance in amounts that exceeded government flood insurance requirements. In *Ulbrich*, the plaintiffs claimed that GMACM improperly backdated and improperly placed wind LPI.

[15] In *Cronk* and *Throm*, the named plaintiffs secured nominal individual (non-class) settlements with GMACM. *See* Doc. 6131. In *Ulbrich*, the plaintiffs obtained nothing.

for the Committee, who assisted in the negotiations. The experience and guidance of counsel for the Committee contributed greatly to the ability of the Settling Parties to reach the Settlement, and to Plaintiffs' Counsel's ability to evaluate the merits of the Settlement.

88. Furthermore, as set forth above, Plaintiffs' Counsel conducted an extensive investigation and analysis of the facts and legal principles relating to Plaintiffs' claims prior to reaching the Settlement. That investigation and analysis enabled Plaintiffs' Counsel to gain an understanding of the relevant facts and legal issues, and prepared Plaintiffs' Counsel to participate in the Settlement negotiations on a well-informed basis.

VIII. REACTION OF THE CLASS

89. To date, no objections have been received to the Settlement, the Plan of Allocation, or the amount of Plaintiffs' Counsel's fee request or expenses. Furthermore, to date, the Settlement Administrator has received only 1 valid request for exclusion from the Settlement. *See* KCC Decl. ¶ 22.

IX. THE PLAN OF ALLOCATION

90. As indicated above, the Settlement establishes a non-reversionary common fund that will be allocated and distributed to qualified Class Members. *See* Doc. 9491 ¶¶ 5, 58. Class Members will not be required to file claims. Rather, Class Members have been identified and their Recognized Losses determined from the Class Data. *See* KCC Decl. ¶ 4.

91. As set forth in the Stipulation, the Net Settlement Fund will be allocated to Class Members *pro rata* based on the Recognized Loss of each Class Member relative to the total Recognized Losses of all Class Members. Each Class Member's Recognized Loss will equal 25% of the amount that GMACM recouped or recovered from that Class Member for LPI during

the Class Period, as determined from the Class Data.[16] *See* Doc. 9491-3, Strauss Decl. Ex. 1, at ¶ 48.

92. Class Members whose payment histories could not be analyzed by computer due to data errors or other discrepancies (less than 1% of the Class Members) will have their Recognized Losses computed based on the assumption that GMACM recouped or recovered from them 42.5% of the LPI charges imposed. This percentage reflects the overall rate at which GMACM recouped or recovered LPI charges from Class Members in the aggregate during the Class Period. *See* Doc. 9491-3, Strauss Decl. Exhibit 1, at ¶ 30.

93. Once the Settlement is finally approved, the Borrower Claims Trust distributes the Distribution Amount to the Escrow Agent, and the Court enters the Class Distribution Order, the Settlement Administrator will issue distribution checks to Class Members whose allocation is $10 or more.[17] The total of all Class Member allocations below $10 will constitute a gross-up residual. The gross-up residual will be re-allocated among those Class Members whose allocations are $10 or more. Plaintiffs' Counsel, with the assistance of Plaintiffs' Forensic Accounting Expert, has estimated that the gross-up residual will constitute approximately 17% of the Net Settlement Fund. *See* Doc. 9491-3, Strauss Decl. Ex. 1, at ¶ 48.

94. Assuming that, as estimated by the Disclosure Statement, Class GS-5 claims yield a $0.30 per $1.00 recovery, it is estimated that, by this procedure, approximately 61,788 of the approximately 143,973 Class Members will be sent distribution checks.

[16] Based on its investigation, Plaintiffs' Counsel has estimated that the Balboa Defendants rebated approximately 25% of GMACM's LPI premiums by virtue of the alleged scheme. Plaintiffs' Counsel has therefore concluded that approximately 25% of the amounts recouped or recovered by GMACM from Class Members were overcharges.

[17] Because of the administrative costs of issuing checks and the fact that small checks in class action settlements often are not cashed, Settlement Class Members whose allocation is less than the $10 threshold will not receive a distribution. *See* Doc. 9491-3, Strauss Decl. Ex. 1, at ¶¶42, 48.

95. Plaintiffs and Plaintiffs' Counsel respectfully submit that the Plan of Allocation is fair and reasonable and should be approved by the Court.

X. THE FEE APPLICATION

96. Class Counsel are requesting a fee award of 35% of the Settlement Fund (the "Fee Application"). Class Counsel also request reimbursement of expenses in the amount of $226,938.29, plus interest.

97. Below is a discussion of some of the factors that courts generally consider when evaluating fee applications by class counsel.

A. The Work and Experience of Counsel

98. Attached hereto as Exhibits C and D are declarations of Plaintiffs' Counsel and Plaintiffs' Special Bankruptcy Counsel, respectively, in support of their request for the award of attorneys' fees and reimbursement of expenses. Included with each declaration is a schedule that summarizes the lodestar of each firm, as well as the expenses incurred by category. The lodestar summaries indicate the amount of time spent by each attorney and paraprofessional employed by Class Counsel's firms, and the lodestar calculations based on their current billing rates. As attested in each declaration, the declarations were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court. For attorneys who are no longer employed by Class Counsel's firms, the lodestar calculations are based upon the billing rates for such attorney in his or her final year of employment. The lodestar amounts do not reflect any work performed in connection with Class Counsel's request for approval of attorneys' fees.

99. Class Counsel expended an aggregate total of 2,487.00 hours in connection with the investigation, prosecution, and resolution of the Bankruptcy Proofs of Claim and the investigation and prosecution of the claims against GMACM and Ally in the *Rothstein* Action.

The resulting lodestar is $1,464,942.00. Assuming that Class GS-5 claims yield a $0.30 per $1.00 recovery, as estimated by the Plan, the requested fee of 35% of the Settlement Fund is significantly less than Plaintiffs' Counsel's lodestar and represents a negative lodestar multiplier of 0.93.

100. Appended hereto as Exhibit E are charts demonstrating that the rates submitted by Class Counsel are in line with those prevailing in the community for similar services provided by lawyers of reasonably comparable skill, experience, and reputation.

101. Plaintiffs' Counsel is experienced in prosecuting class actions, and worked diligently and efficiently in prosecuting Plaintiffs' Claims. Plaintiffs' Counsel has a long and successful track record in class action litigation, as set forth in the firm résumé attached to the Declaration of Mark A. Strauss on Behalf of Kirby McInerney LLP in Support of Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses, which is appended hereto as Exhibit C.

102. Plaintiffs' Special Bankruptcy Counsel is experienced in bankruptcy litigation and well trained in all aspects of bankruptcy law, as set forth in the firm résumé attached to the Declaration of Garvan F. McDaniel on Behalf of the Law Firm of Hogan McDaniel in Support of Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses, which is appended hereto as Exhibit D.

103. At all times Class Counsel worked closely to avoid duplication of effort and to ensure efficient prosecution.

B. The Standing and Caliber of Defense Counsel

99. The quality of the work performed by Class Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. The Settling Debtors were

represented by Morrison & Foerster LLP – one of the country's most prestigious law firms.[18] Morrison & Foerster spared no effort in the defense of their client. In the face of this experienced, formidable, and well-financed opposition, Plaintiffs' Counsel was nonetheless able to allege and argue a case that was sufficiently strong to persuade the Settling Debtors to settle the case on terms favorable to the Class.

C. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Class Action Cases

104. This prosecution was undertaken by Class Counsel entirely on a contingent fee basis. The risks assumed by Class Counsel in prosecuting the Bankruptcy Proofs of Claim and the claims against GMACM and Ally in the *Rothstein* Action are described above. Those risks are also relevant to an award of attorneys' fees. Here, the risks assumed by Class Counsel and the time and expenses incurred without any payment, were extensive.

105. From the outset, Class Counsel understood that they were embarking on a complex, expensive and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Class Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of Plaintiffs' claims, and that funds were available to compensate staff and to cover the considerable out-of-pocket costs that claims such as these require. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Class Counsel have received no compensation during the course of this litigation and have incurred $1,464,942.00 in out-of-pocket expenses in prosecuting and resolving Plaintiffs' claims for the benefit of the Class.

[18] Similarly, Ally and the Balboa Defendants were represented in the *Rothstein* Action by top-tier defense firms – Otterbourg, Steindler, Houston & Rosen, LLP, and Buckley Sandler, LLP, respectively.

106. Plaintiffs' Counsel also bore the risk that no recovery would be achieved. As discussed herein, from the outset, Plaintiffs' claims presented risks and uncertainties that could have prevented any recovery whatsoever. Despite the most vigorous and competent of efforts, success in contingent-fee litigation such as this is never assured.

107. Plaintiffs' Counsel knows from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

108. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able lawyers bring class actions on behalf of injured consumers. Vigorous enforcement of civil RICO and other pro-consumer laws can only occur if experienced and able attorneys take an active role to protect consumers' rights. If this important public policy is to be carried out, the courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting consumer class actions.

109. Class Counsel's extensive and persistent efforts in the face of substantial risks and uncertainties have resulted in a significant recovery for the benefit of the Class. In circumstances such as these, and in consideration of the hard work of Class Counsel and the extraordinary result achieved, the requested fee of 35% of the Settlement Fund is reasonable and should be approved.

D. The Lodestar/Multiplier Cross-Check

110. As set forth fully in the accompanying memorandum of law in support of Class Counsel's fee application, the requested fees are fair and reasonable under both the lodestar/multiplier methodology and the percentage methodology.

111. Exhibits C and D detail the time and expenses incurred and the hourly rates of Class Counsel. Altogether, Class Counsel worked for a total of 2,487.00 hours, for a lodestar of $1,464,942.00, and seek a fee of 35% of the Settlement Fund. Assuming that Class GS-5 claims yield a $0.30 per $1.00 recovery, as estimated by the Plan, this translates into a fee award of $1,365,000.

112. Notably, the resulting negative multiplier of 0.93 strongly indicates that the requested fee is reasonable and, in fact, represents a tremendous bargain for the Class. Indeed, Courts in the S.D.N.Y routinely award percentage-based fee awards where lodestar cross-checks yield high positive multipliers. Multipliers of nearly five have been "deemed 'common.'" *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *17 n.7 (S.D.N.Y. July 27, 2007) (cited by *Shapiro v. JPMorgan Chase & Co.*, No. 11 CIV. 7961 (CM), 2014 WL 1224666, at *24 (S.D.N.Y. Mar. 24, 2014)); *see also Walmart Stores Inc. v. Visa USA Inc.*, 396 F. 3d 96, 123 (2d Cir. 2005) (upholding a multiplier of 3.5 as reasonable on appeal); *Van Dongen v. CNInsure Inc.*, No. 11 Civ. 07320 (S.D.N.Y. Aug. 15, 2014) (ECF No. 57) (3.11 lodestar multiplier in a case settling for $6.6 million); *Sumitomo*, 74 F. Supp. 2d at 399-400 (multiplier of 2.5 in RICO action); *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 134 (2d Cir. 2008) (noting that 2.04 multiplier was "toward the lower end of reasonable fee awards"); *In re Adelphia Commc'ns Corp. Sec. & Deriv. Litig.*, No. 03 MDL 1529, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) (awarding 2.89 multiplier); *Maley*, 186 F. Supp. 2d at 369 (awarding fee equal to a 4.65 multiplier as "well within the range awarded by courts in this Circuit and courts throughout the country").

XI. REIMBURSEMENT OF THE REQUESTED LITIGATION EXPENSES IS FAIR AND REASONABLE

113. Class Counsel seeks reimbursement of an aggregate of $226,938.29 in expenses reasonably and actually incurred on behalf of Plaintiffs and the Class. These expenses are reflected on the books and records maintained by Class Counsel. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred.

114. The expenses of Plaintiffs' Counsel and Plaintiffs' Special Bankruptcy Counsel are set forth in detail in the expense schedules attached, respectively, to my declaration and that of Mr. McDaniel, which are attached hereto as Exhibits C and D. The expense schedules identify the specific category of expense, *e.g.*, on-line research, expert fees, travel costs, telephone, postage expenses and other costs actually incurred for which reimbursement is sought. These expense items are billed separately by Class Counsel, and such charges are not duplicated in the respective firms' billing rates.

115. Notably, the lion's share of the expenses consists of reimbursement of amounts paid or payable to Plaintiffs' Forensic Accounting Expert and Plaintiffs' Database Hosting Provider. Plaintiffs' Counsel seeks reimbursement of $157,285.04 with respect to Plaintiffs' Forensic Accounting Expert and $20,573.00 with respect to Plaintiffs' Database Hosting Provider. As described above, Plaintiffs' Forensic Accounting Expert assisted Plaintiffs' Counsel in negotiating to obtain and in analyzing the Class Data. Plaintiffs' Database Hosting Provider hosted the Class Data on its computer system,[19] and programmed the algorithm (which was developed by Plaintiffs' Counsel with the assistance of Plaintiffs' Forensic Accounting

[19] The Class Data were too voluminous to be hosted by Plaintiffs' Counsel or Plaintiffs' Forensic Accounting Experts on their systems.

Expert) to iterate through borrower payment histories, identify Class Members, and determine Class Members' Recognized Losses.

116. As described above, the efforts of Plaintiffs' Forensic Accounting Expert and Plaintiffs' Database Hosting Provider have been, and continue to be, critical to the effectuation of the Settlement.

117. Other expenses include the actual costs of computerized research. These are the charges for computerized factual and legal research services such as Westlaw and Lexis-Nexis. Included in the expense request above is $36,808.77 for reimbursement of the costs of on-line computerized research.

118. All of the litigation expenses incurred were necessary to the successful prosecution of Plaintiffs' claims and to the effectuation of the Settlement and the Plan of Allocation.

119. Notably, from the beginning of the case, Class Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until a recovery was achieved. Class Counsel also understood that, even assuming that Plaintiffs' claims were ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced by them during the litigation. Thus, Class Counsel were motivated to, and did, take significant steps to minimize expenses wherever practicable without jeopardizing the vigorous and efficient prosecution of Plaintiffs' claims.

120. In addition, the Notice apprised Class Members that Class Counsel would be seeking reimbursement of Litigation Expenses in the approximate amount of $250,000, and, to date, no objection has been raised as to this request.

121. In view of, *inter alia*, the complex nature of Plaintiffs' claims, the litigation expenses incurred were reasonable and necessary to pursue the interests of the Class. Accordingly, Class Counsel respectfully submits that the expenses incurred are reasonable in amount and should be reimbursed in full.

122. As the Notice indicates, approval of the Settlement and Plan of Allocation is separate from the approval of Class Counsel's application for an award of fees and expenses. Any determination with respect to Plaintiffs' Counsel's and Plaintiffs' Special Bankruptcy Counsel's application for an award of fees and expenses will not affect the Settlement, if approved.

123. The instant request for reimbursement of expenses does not include any costs or expenses which will be incurred in the future in connection with the allocation and distribution of the Net Settlement Fund once the Settlement is finally approved and the Borrower Claims Trust Distributes the Settlement Amount. Consistent with the Stipulation, Class Counsel will apply for reimbursement or payment of any such expenses in connection with the motion for approval of the Distribution Order.

XII. PLAINTIFFS' COUNSEL'S REQUEST FOR INCENTIVE AWARDS FOR THE NAMED PLAINTIFFS

124. Plaintiffs' Counsel seeks service awards in the amount of $2,500 for each of the following named plaintiffs: Landon Rothstein, Jennifer Davidson, Robert Davidson, and Ihor Kobryn. Over the course of the litigation, these four Named Plaintiffs have been in frequent contact with Plaintiffs' Counsel through written correspondence and telephone calls in order to remain informed of the status of the proceedings and to discuss substantive issues relating to the claims and the Settlement.

125. Further, in support of their claims, the Named Plaintiffs each spent considerable time reviewing records in their possession for relevant documents which they diligently provided to Plaintiffs' Counsel.

126. The Named Plaintiffs invested their time and energy on behalf of the Class to ensure, as best as they could, that Plaintiffs' Counsel had the information and assistance needed in order to bring and prosecute Plaintiffs' claims on behalf of all Class Members.

XIII. SUMMARY LIST OF EXHIBITS

127. Annexed hereto as Exhibit A is the Notice Order providing for the issuance of notice to the Class and scheduling the Final Approval Hearing for May 24, 2016, at 10:00 a.m. before this Court.

128. Annexed hereto as Exhibit B is the Declaration of Jay Geraci on behalf of KCC, Plaintiffs' Database Hosting Provider and the Court-approved Settlement Administrator, regarding database hosting and programming services and notice procedures in connection with the Settlement.

129. Annexed hereto as Exhibit C is the Declaration of Mark A. Strauss on Behalf of Kirby McInerney LLP in Support of Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses. Appended to such declaration is the lodestar summary, schedule of expenses, and résumé of my firm.

130. Annexed hereto as Exhibit D is the Declaration of Garvan F. McDaniel on behalf of the law firm of Hogan McDaniel, Plaintiffs' Special Bankruptcy Counsel, in Support of Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses. Appended to such declaration is the lodestar summary, schedule of expenses, and résumé of Mr. McDaniel's firm.

131. Annexed hereto as Exhibit E is a table of comparable billing rates, compiled by Plaintiffs' Counsel, which have been submitted in connection with fee applications filed in recent class action settlements in this District.

132. Annexed hereto as Exhibit F is a true and correct copy of an article by Mayer Brown LLP entitled *Do Class Actions Benefit Class Members, An Empirical Analysis of Class Actions* (2013).

CONCLUSION

133. This Settlement reflects a reasoned compromise based on Plaintiffs' Counsel's knowledge of the strengths and weaknesses of the case gained through thorough review and analysis of the facts and law. In view of the significant recovery to the Class, the very substantial risks of continuing to prosecute the Bankruptcy Proofs of Claim, the substantial efforts of Class Counsel, the quality of the work performed, the contingent nature of the fee, the complexity of the claims and the standing and experience of Class Counsel, Plaintiffs and Class Counsel respectfully submit that: (i) the Settlement should be approved as fair, reasonable, and adequate; (ii) the Plan of Allocation should be approved as fair and reasonable; (iii) a fee in the amount of 35% of the Settlement Fund, plus reimbursement of expenses in the amount of $226,938.29, should be awarded to Class Counsel; and (iv) incentive awards in the amount of $2,500 should be awarded to each of the Named Plaintiffs.

I declare under penalty of perjury, under the laws of the State of New York, that the foregoing is true and correct.

Executed: April 25, 2016
New York, New York

/s/ Mark A. Strauss
MARK A. STRAUSS

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT WITH THE ROTHSTEIN PLAINTIFFS AND PROVIDING FOR NOTICE

WHEREAS, on November 9, 2012, Named Plaintiffs Landon Rothstein, Jennifer Davidson, Robert Davidson, and Ihor Kobryn (collectively, the "Plaintiffs"), individually and purportedly on behalf of the putative class, filed Bankruptcy Proofs of Claim 4074 and 3966;

WHEREAS, Plaintiffs, individually and on behalf of the proposed Settlement Class (as hereinafter defined), and Debtors GMAC Mortgage, LLC ("GMACM"), Residential Capital, LLC ("Residential Capital"), and the Borrower Claims Trust (collectively, the "Settling Defendants"), and the Trustee for the Borrower Claims Trust (the "Borrower Claims Trustee") (together with the Settling Defendants, the Borrower Claims Trustee and the Plaintiffs, the "Settling Parties"), have entered into a Stipulation and Agreement of Settlement With Rothstein Plaintiffs dated December 29, 2015 (the "Stipulation"), which is subject to review by the Court under Rules 7023 and 9019 of the Federal Rules of Bankruptcy Procedure, and which, together with the Exhibits thereto, sets forth the terms and conditions of the proposed settlement, which provides for a complete dismissal on the merits and with prejudice of the claims asserted in the Bankruptcy Proofs of Claim against all Settling Defendants, upon the terms and conditions set forth in the Stipulation (the "Settlement").

WHEREAS, Named Plaintiffs have made an application, pursuant to Rule 7023 of the Federal Rules of Bankruptcy Procedure and 9019, for an order preliminarily approving the Settlement in accordance with the Stipulation, certifying the Settlement Class for purposes of settlement only, and approving notice to the Settlement Class as more fully described herein;

WHEREAS, the Court having considered the Stipulation and the Exhibits thereto, including the proposed (a) Notice of (I) Pendency of Class Action; (II) Proposed Settlement and Plan of Allocation; (III) Settlement Fairness Hearing; and (IV) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, (b) Summary Direct U.S. Mail Postcard Notice, (c) Publication Notice, and (d) Final Judgment and Order of Dismissal With Prejudice ("Final Approval Order" or "Judgment") and the submissions relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and

WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall have the same meanings as they have in the Stipulation;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement Class Certification** – Pursuant to Rules 7023(a) and 7023(b)(3) of the Federal Rules of Bankruptcy Procedure, and for purposes of settlement only, the following is hereby certified as the Settlement Class: all residential mortgage loan borrowers whose loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or part, charges for Lender-Placed Insurance, including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lender-Placed Insurance, at any time from February 3, 2004 through October 2, 2013, excluding (i) the Settling Defendants named in the Complaint, (ii) current and former officers, directors, and employees of the Settling Defendants and of the Balboa Defendants, and their immediate families, and (iii) the Settling

Defendants' and the Balboa Defendants' legal representatives, heirs, successors or assigns, and any entity in which any defendant has or had a controlling interest.

2. **Settlement Class Findings** – The Court finds, for purposes of settlement only, that the prerequisites for certifying the Settlement Class under Rules 7023(a) and 7023(b)(3) of the Federal Rules of Bankruptcy Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of the proposed Class Representatives (defined below) are typical of the claims of the Settlement Class; (d) proposed Class Representatives and Plaintiffs' Counsel have and will fairly and adequately represent the interests of the Settlement Class; and (e) class certification is superior to other available methods for the fair and efficient adjudication of the Bankruptcy Proof of Claim.

3. The Court hereby finds and concludes pursuant to Rule 7023 of the Federal Rules of Bankruptcy Procedure, and for purposes of settlement only, that Landon Rothstein, Jennifer Davidson, Robert Davidson, and Ihor Kobryn are adequate class representatives and certifies them as class representatives on behalf of the Settlement Class ("Class Representatives"), and hereby appoints Plaintiffs' Counsel, the law firm of Kirby McInerney LLP, as Class Counsel for the Settlement Class pursuant to Bankruptcy Code 7023(g).

4. **Preliminary Approval of the Settlement** – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, as being fair, reasonable and adequate, and in the best interest of Plaintiffs and the other Settlement Class Members, subject to further consideration at the Final Approval Hearing to be conducted as described below.

5. **Final Approval Hearing** – The Court will hold a settlement hearing (the "Final Approval Hearing") on May 24, 2016 at 10:00 a.m. at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004-1408, for the following purposes, among others: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable and adequate, and should be approved by the Court; (b) to determine whether the Final Approval Order substantially in the form attached as Exhibit B to the Stipulation should be entered resolving the Bankruptcy Proofs of Claim on the merits and with prejudice against all the Settling Defendants; (c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (d) to determine whether the motion by Class Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to Settlement Class Members as set forth in Paragraph 7 of this Order.

6. The Court may adjourn the Final Approval Hearing and approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

7. **Retention of Settlement Administrator and Manner of Notice** – Class Counsel are hereby authorized to retain KCC Class Actions Services LLC (the "Settlement Administrator") to supervise and administer the notice procedure as well as the processing of distributions to Settlement Class Members as more fully set forth below. Notice of the Settlement and the Final Approval Hearing shall be given by Class Counsel as follows:

(a) pursuant to paragraph (bb) of the Stipulation, within five (5) business days of the entry of this Order, the Borrower Claims Trust shall advance $95,000.00 in cash to the Escrow Account to cover the cost of disseminating the Notice ("Notice Amount"), as reflected in an invoice provided by the Settlement Administrator to the Borrower Claims Trust, and subsequently credited against the Settlement Amount;

(b) within five (5) business days of the date of entry of this Order, Plaintiffs' Counsel shall provide or cause to be provided to the Borrower Claims Trust, in a mutually agreed electronic form, the anonymized numbers corresponding to the members of the Settlement Class as determined by Plaintiffs' Forensic Accounting Expert through analysis of the Class Data;

(c) within five (5) business days after obtaining the list specified in the foregoing paragraph, the Borrower Claims Trust shall provide, in a mutually agreed electronic form, a de-anonymized list of the Settlement Class Members (at no cost to the Settlement Fund, Plaintiffs, Plaintiffs' Counsel or the Settlement Administrator);

(d) not later than ten (10) business days after obtaining the list specified in the foregoing paragraph, the Settlement Administrator shall cause a copy of the Summary Direct U.S. Mail Postcard Notice, substantially in the form annexed to the Stipulation as Exhibit A-3, to be mailed by U.S. Postcard Mail to the members of the Settlement Class at their last known addresses as derived from the information provided by the Settling Debtors. The Settlement Administrator shall update the addresses using the National Change of Address Database before sending the Summary Direct U.S. Mail Postcard Notice to the members of the Settlement Class;

(e) not later than ten (10) business days after the entry of this Order, the Settlement Administrator shall cause the Publication Notice, substantially in the form attached to

the Stipulation as Exhibit A-2, to be published once in *USA Today* and to be transmitted once over the *PR Newswire*; and

(f) the Settlement Administrator shall establish a class website that shall contain information about the Settlement, including electronic copies of the Notice, the Publication Notice, and the Stipulation. The class website shall be maintained by the Settlement Administrator and shall be activated no later than ten (10) business days after entry of this Order.

8. To the extent the CAFA Data Report is requested by counsel to the Borrower Claims Trust, the Borrowers Claims Trust shall, by wire transfer in accordance with instructions provided by Plaintiffs' Counsel, reimburse Plaintiffs' Counsel for all costs, fees, or expenses incurred to prepare the CAFA Data Report as reasonably documented, including by the Settlement Administrator, Plaintiffs' Database Hosting Provider, or Plaintiffs' Forensic Accounting Expert, up to a maximum of $5,000 (the "CAFA Data Report Reimbursement"), no later than forty (40) days after the CAFA Data Report is provided. The CAFA Data Report Reimbursement shall not be credited against the Settlement Amount.

9. **Approval of Form and Content of Notice** – The Court (a) approves, as to form and content, the Notice, the Publication Notice and the Summary Direct U.S. Mail Postcard Notice, substantially in the forms attached to the Stipulation as Exhibits A-1 through A-3, respectively, and (b) finds that the mailing and distribution of the Summary Direct U.S. Mail Postcard Notice and the publication of the Publication Notice in the manner and form set forth in paragraph 7 of this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the proceeding, of the effect of the proposed Settlement (including the Releases contained therein) and of their right to object to any aspect of the

proposed Settlement, exclude themselves from the Settlement Class and appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 7023 of the Federal Rules of Bankruptcy Procedure, due process, the Rules of the Court and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice, Summary Direct U.S. Mail Postcard Notice and Publication Notice before they are mailed and published, respectively.

10. **Participation in the Settlement** – Settlement Class Members who wish to participate in the Settlement and to be eligible to receive a distribution from the Net Settlement Fund need not do anything, however, by receiving a distribution, a Settlement Class Member shall be deemed to have submitted to the jurisdiction of the Court and the subject matter of the Settlement.

11. **Exclusion From the Settlement Class** – The Class Notice shall provide that any member of the Settlement Class who wishes to exclude himself, herself or itself from the Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notice, which shall provide that: (a) any such request for exclusion from the Settlement Class must be mailed or delivered such that it is received no later than fourteen (14) calendar days prior to the Final Approval Hearing, to: *In re Residential Capital, LLC, et al.*, EXCLUSIONS, c/o KCC Class Action Services at the address provided in the Notice; and (b) that each request for exclusion must (i) state the name, address and telephone number of the person or entity requesting exclusion; (ii) state that such person or entity "requests exclusion from the Settlement Class in *In re Residential Capital, LLC, et al.*, No. 12-12020 (Bankr. S.D.N.Y.) (MG)"; (iii) state the address of the property that was subject to Lender-Placed

Insurance; (iv) state the loan number; and (v) be signed by such person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be valid and effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court.

12. Any Person who or which timely and validly requests exclusion from the Settlement Class, in compliance with the terms stated in this Order, or is excluded from the Settlement Class by order of the Court (the "Opt-Out Settlement Class Members") shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement or the Stipulation, and shall have no right to receive any payment out of the Net Settlement Fund, but shall otherwise remain bound by the Chapter 11 Plan, the Confirmation Order and all other orders of the Bankruptcy Court entered into Chapter 11 Cases.

13. The Settlement Administrator shall scan and send electronically copies of all requests for exclusion in PDF format (or such other format as shall be agreed) to Settling Debtors' Counsel and to Plaintiffs' Counsel expeditiously (and not more than three (3) business days) after the Settlement Administrator receives such a request.

14. Any Settlement Class Member who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation and the Settlement and all proceedings, determinations, orders and judgments in this proceeding, including, but not limited to, the Final Approval Order, and the Releases provided for therein and in the Stipulation, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from

commencing, maintaining or prosecuting any of the Released Claims against any of the Released Parties, as more fully described in the Stipulation and Notice.

15. **Appearance and Objections at Final Approval Hearing** – Any Settlement Class Member who does not request exclusion from the Settlement Class may enter an appearance in this proceeding, at his, her or its own expense, individually or through counsel of his, her or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to Class Counsel and Settling Defendants' counsel, as set forth in paragraph 16 below, such that it is received no later than fourteen (14) calendar days prior to the Final Approval Hearing, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

16. Any Settlement Class Member who does not submit a valid and timely request for exclusion from the Settlement Class may file written objections to any aspect of the proposed Settlement, the proposed Plan of Allocation, the motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and appear and show cause, if he, she or it has any cause, why the proposed Settlement, the proposed Plan of Allocation, the motion for attorneys' fees and reimbursement of Litigation Expenses should not be approved; *provided*, *however*, that no Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of any aspect of the proposed Settlement, the proposed Plan of Allocation, the motion for attorneys' fees and reimbursement of Litigation Expenses unless that Person has filed written objections with the Court and served copies of such objections on Class Counsel and Defendants' counsel at the addresses set forth below such that they are received no later than fourteen (14) calendar days prior to the Final Approval Hearing.

To the Court

Clerk of the Court
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408
Re: *In re Residential Capital, LLC, et al.*,
Case No. 12-12020 (MG)

Class Counsel

Mark A. Strauss, Esq.
Thomas W. Elrod, Esq.
Kirby McInerney LLP
825 Third Avenue
New York, NY 10022

Counsel for the Settling Defendants

Norman S. Rosenbaum, Esq.
Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019

17. Any objections, filings and other submissions by the objecting Settlement Class Member (a) must contain a statement of his, her or its objections, as well as the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (b) must include documents sufficient to prove membership in the Settlement Class, including the address of the property that is subject to Lender-Placed Insurance and the loan number. Counsel for the Settling Defendants and Class Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

18. Any Settlement Class Member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, the motion for attorneys' fees and reimbursement of Litigation Expenses, and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement, the Plan of Allocation,

the requested attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the Settlement, the Plan of Allocation or the requested attorneys' fees and Litigation Expenses in this or any other proceeding.

19. **Stay** – Unless otherwise ordered by the Court, the Court stays all proceedings in this proceeding other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, the Court enjoins Plaintiffs and all other Settlement Class Members from commencing, prosecuting or asserting any claim against any of the Released Parties that is a Released Claim or that would be barred pursuant to paragraph (nn) of the Stipulation.

20. **Settlement Administration Fees and Expenses** – The Notice Amount and all other reasonable costs, fees and expenses costs, incurred in identifying and notifying Settlement Class Members as well as in administering the Settlement shall be paid as set forth in paragraph [cc] of the Stipulation without further order of the Court, up to a limit of $160,000. After the Settlement Effective Date, any Notice and Administration Costs in excess of this amount shall be paid from the remainder of the Settlement Fund, subject to approval of Class Counsel, without further order of the Court.

21. **Settlement Fund** – The contents of the Settlement Fund held by Class Counsel (which the Court approves as the Escrow Agent), shall be subject to the jurisdiction of the Court and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or the Distribution Order. The Settlement Fund shall be deposited into an interest-earning escrow account designated by Class Counsel and all interest accruing thereon shall be subject to the jurisdiction of the Court and will remain subject to the jurisdiction of the Court until such time as it is distributed to Settlement Class Members. Except

as provided in paragraph 18 in the Stipulation, the Escrow Agent shall invest any funds held in the Escrow Account in United States Treasury Bills (or a mutual fund invested solely in such instruments or another similarly secure investment) and shall collect and reinvest all interest accrued thereon, except that any residual cash balance in the Escrow Account of less than $250,000 may be held in a cash account in an FDIC-insured financial institution or invested in money market mutual funds exclusively comprising investments secured by the full faith and credit of the United States. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in a non-interest bearing account that is fully insured by the FDIC. Except as otherwise expressly provided in the Stipulation, Plaintiffs, the Settling Defendants, and their respective counsel shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes owned by the Settlement Fund, or any losses incurred in connection therewith.

22. **Taxes** – Class Counsel, or its authorized agent, the Settlement Administrator, is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Settlement Fund, to pay from the Settlement Fund any taxes owed with respect to the Settlement Fund and to otherwise perform all obligations with respect to taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

23. **Termination** – If the Settlement is terminated, not approved, cancelled, fails to become effective for any reason, or the Settlement Effective Date does not occur, this Order shall

become null and void, and shall be without prejudice to the rights of Plaintiffs, the Settlement Class Members and the Settling Defendants, all of whom shall be restored to their respective positions and the Bankruptcy Proofs of Claim shall proceed as though the Settlement Class had never been certified, with the Settling Parties reserving all their rights regarding the issue of class certification, as provided for in the Stipulation, except that any Notice and Administration Costs paid or incurred at the time of termination, and less any taxes paid or payable on the Settlement Fund (including any costs and expenses of tax attorneys and accountants) at the time of termination need not be refunded to the Settling Defendants.

24. **Use of this Order** – Neither this Order nor the proposed Settlement (including the Stipulation or any of its terms, or any aspect of any of the negotiations, discussions, drafts, and proceedings in connection with the Stipulation, and any act performed or document signed in connection with the Stipulation): (a) shall be offered or received against the Released Parties, Plaintiffs or the other members of the Settlement Class as evidence of, or be deemed to be evidence of, any presumption, concession, or admission by any of the Released Parties or by Plaintiffs or the other members of the Settlement Class with respect to the truth of any fact alleged by Plaintiffs or the validity, or lack thereof, of any claim that has been or could have been asserted in the Rothstein Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Rothstein Action or in any litigation, or of any liability, negligence, fault or wrongdoing of the Released Parties; (b) shall be offered or received against the Released Parties as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Released Party, or against Plaintiffs or any of the other members of the Settlement Class as evidence of any infirmity in the claims of Plaintiffs and the other members of the

Settlement Class; (c) shall be offered or received against the Released Parties, Plaintiffs, or the other members of the Settlement Class as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to the Stipulation, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that if the Stipulation is approved by the Bankruptcy Court, the Released Parties may refer to it to effectuate the liability protection granted them hereunder; (d) construed against the Released Parties, Plaintiffs' Counsel, or Plaintiffs or the other members of the Settlement Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and (e) construed as or received in evidence as an admission, concession, or presumption against Plaintiffs or the other members of the Settlement Class or any of them that any of their claims are without merit or that damages recoverable under the Complaints would not have exceeded the Settlement Fund.

25. **Supporting Papers** – Class Counsel shall file and serve papers in support of the proposed Settlement, the Plan of Allocation and Class Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses no later than twenty-eight (28) calendar days prior to the Final Approval Hearing; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Final Approval Hearing.

26. Neither the Settling Defendants, their respective counsel, nor the Committee shall have any responsibility for or liability with respect to the Plan of Allocation or any application for attorneys' fees or reimbursement of Litigation Expenses submitted by Class

Counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

27. At or after the Final Approval Hearing, the Court shall determine whether the Plan of Allocation proposed by Class Counsel, and any application for attorneys' fees or reimbursement of Litigation Expenses, shall be approved.

28. All reasonable expenses incurred in notifying Settlement Class Members, as well as in administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither the Plaintiffs nor Class Counsel shall have any obligation to repay any amounts actually and properly disbursed from the Settlement Fund.

29. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

Dated: February 9, 2016
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	**DECLARATION OF JAY GERACI ON BEHALF OF KCC CLASS ACTION SERVICES LLC RE: DATABASE HOSTING AND PROGRAMMING SERVICES AND NOTICE PROCEDURES IN CONNECTION WITH THE *ROTHSTEIN* CLASS ACTION SETTLEMENT**
Debtors.	

I, **JAY GERACI,** declare:

1. I am a Senior Project Manager at KCC Class Action Services LLC, located at 3301 Kerner Boulevard, San Rafael, California. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. KCC serves in two capacities in connection with the *Rothstein* class action Settlement: (i) as Plaintiffs' Database Hosting Provider, and (ii) as the Court-appointed Settlement Administrator. This declaration summarizes KCC's activities in each of those capacities.

A. KCC's Database Hosting and Programming Services

3. Plaintiffs' Counsel engaged KCC as Plaintiffs' Database Hosting Provider on or around May 29, 2014 to assist in connection with storage and analysis of data produced by the Debtors pertaining to the Class (the "Class Data") in connection with the Settlement. KCC caused the Class Data, which comprises more than 8.5 gigabytes of information including the payment histories of borrowers, to be loaded onto our computer system.

4. Thereafter, KCC helped Plaintiffs' Counsel and Plaintiffs' Forensic Accounting Expert analyze the Class Data. Plaintiffs' Forensic Accounting Expert provided KCC with an algorithm to iterate through the data, making requisite calculations. KCC programmed the algorithm in computer script and ran it on the Class Data, thereby generating a report pertaining to the Class. The report identifies the members of the Class and indicates the amounts that GMAC Mortgage LLC ("GMACM") recouped from each for Lender-Placed Insurance ("LPI"). Under the Plan of Allocation, each Class Member's Recognized Loss will equal 25% of those amounts.

5. Notably, the Class Data initially was provided to KCC in anonymized form, *i.e.*, each borrower was assigned a unique identifying number, with any Personally Identifiable Information ("PII") removed.

6. On or about February 14, 2016, KCC generated a computerized list of the anonymized numbers corresponding to the Settlement Class Members as determined from the Class Data. KCC caused such list to be provided to the Borrower Claims Trust on behalf of Plaintiffs in accordance with the Order Preliminary Approving Proposed Settlement with the *Rothstein* Plaintiffs (the "Notice Order") [Doc. 9609].

7. On or about February 19, 2016, the Borrower Claims Trust provided KCC with a computerized list of the Settlement Class members in de-anonymized form (the "Class Member List").

B. Notice Procedures

8. In the Notice Order, the Court appointed KCC as the Settlement Administrator in connection with the Settlement.

9. In this capacity, KCC was retained to, among other tasks, mail the Summary Direct U.S. Mail Postcard Notice to class members, publish the Publication Notice once in *USA* Today and to be transmitted once over the *PR Newswire*, establish a class website that shall contain information about the settlement, including electronic copies of the Notice, the Publication Notice, and Stipulation, and establish an Interactive Voice Response (the "IVR") system where class members could obtain additional information about the settlement. Copies of the Summary Direct U.S. Mail Postcard Notice, Class Notice, and Publication Notice are attached hereto as Exhibits A, B, and C respectively.

10. On or around February 22, 2016, KCC began working with the Class Member List provided by the Borrowers Claims Trust. The Class Member List contained 143,974 names and addresses. On or before March 4, 2016, KCC caused the addresses in the Class Member List to be updated using the National Change of Address system, which updates addresses for all people who had moved during the previous four years and filed a change of address with the U.S. Postal Service. New addresses were found for 10,581 class members. The Class Member List was updated with these new addresses.

11. In reviewing the data, KCC identified 1 duplicate record, on counsel's recommendation the duplicate record was removed from the Class Member List resulting in 143,973 names and addresses remaining on the Class Member List.

12. On or before March 4, 2016, KCC caused an Interactive Voice Response (the "IVR") system to be established (844-830-5220) to provide information about the settlement and to record requests for Notice Packets.

13. On or before March 4, 2016, KCC caused a website to be established (www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com) to provide information about the settlement and to allow Class Members to download copies of the Class Notice and Publication Notice.

14. KCC caused a press release to be distributed on February 23, 2016. Attached as Exhibit D is verification of the release. KCC cased the Publication Notice to publish as an eighth page on Page 2D of the February 23 issue of *USA Today*. Attached as Exhibit E is a copy of the Publication as it appeared.

15. On March 4, KCC caused the 143,973 Summary Direct U.S. Mail Postcard Notices to be mailed by First Class postage at the U.S. Post Office.

16. During the period March 4, 2016 through April 25, 2016 178 Summary Direct U.S. Mail Postcard Notices were returned to KCC by the U.S. Postal Service with forwarding addresses. KCC caused the Class Member List to be updated with the new addresses and Summary Direct U.S. Mail Postcard Notices to be re-mailed to the class members at each of these new addresses. Of these 178 Summary Direct U.S. Mail Postcard Notices that were re-mailed, 9 were returned by the U.S. Postal Service once more without a forwarding address. These addresses were not searched again.

17. During the period March 4, 2016 through April 25, 2016, 32,199 Summary Direct U.S. Mail Postcard Notices were returned to KCC by the U.S. Postal Service without forwarding addresses. KCC conducted address searches using credit and other public source databases to locate new addresses for 24,180 of these class members. Of the 30,292 class members searched, new addresses were found for 24,180 of them and no new addresses were found for 6,112 of them. The Class Member List was updated with these new addresses and Summary Direct U.S. Mail Postcard Notices were re-mailed to these 24,180 class members using the new addresses.

18. Of the 24,180 class members with newly found addresses, 1,895 were returned by the U.S. Postal Service once more without a forwarding address. These addresses were not searched again.

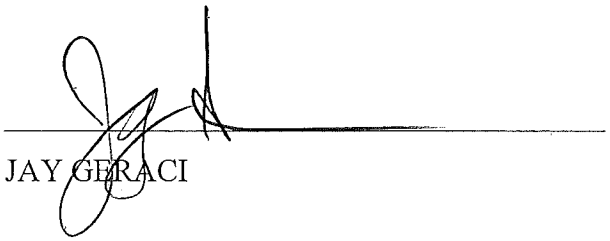
19. Altogether, there are 8,016 class members with known bad addresses (1,895 mailed, returned, searched, re-mailed and returned once more by the U.S. Postal Service a second time, 9 returned with a forwarding address, re-mailed and returned once more by the U.S. Postal Service a second time, and 6,112 searched without a new address being found).

20. As of the date of this declaration, 4,605 calls have been received by the IVR. Of these callers, 395 requested a Class Notice. All Class Notice requests have been fulfilled.

21. As of the date of this declaration, KCC has received one request for Exclusion. A copy of the exclusion request is attached hereto as Exhibit F.

22. As of the date of this declaration, KCC has received no Objections to the Settlement.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 25th day of April 2016 at Novato, California.



JAY GERACI

Exhibit A

Legal Notice

Your rights may be affected and you could get a payment from a class action settlement involving lender-placed hazard insurance on GMAC Mortgage, LLC serviced residential home mortgages from February 3, 2004 through October 2, 2013.

A Federal Bankruptcy Court authorized this Notice. This is not a solicitation from a lawyer.

1-844-830-5220

www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com

GMAC Mortgage Lender Placed Insurance Settlement Administrator
P.O. Box 30206
College Station, TX 77842-3206

«ScanString»
Postal Service: Please do not mark barcode

Claim#: RCP-«AccountID»-«NoticeID»
«FirstName» «LastName»
«Attention»
«Address2»
«Address1»
«City», «StateCd» «Zip»
«CountryCd»

RCP

Please be advised that your rights may be affected by a class action Settlement. If Bankruptcy Proof of Claim that has been proposed in the bankruptcy proceeding *In re: Residential Capital, LLC*, Case No. 12-12020 (MG) (U.S. Bankruptcy Court, Southern District of New York) relating to lender-placed hazard insurance on residential mortgage loans serviced by GMAC Mortgage, LLC ("GMACM"). The Settling Defendants deny any and all claims, allegations of fault, liability, wrongdoing or damages whatsoever. The Court has not decided who is right.

Who is Included? The Settlement includes all residential mortgage loan borrowers whose loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or part, charges for lender-placed hazard insurance on residential real property ("Lender-Placed Insurance"), including, without limitation, any borrower whose payment was applied, in whole or part, to charges for Lender-Placed Insurance, at any time from February 3, 2004 through October 2, 2013 (the "Class Period").

What Can You Get? The parties have agreed to settle the Named Plaintiffs' Bankruptcy Proofs of Claim for an allowed unsecured claim not subject to subordination, represented by Bankruptcy Proof of Claim No. 4074, in the amount of $13 million against GMACM only (the "Allowed Claim"). The Allowed Claim will be an "Allowed Borrower Claim" in Class GS-5, as set forth in the Chapter 11 Plan. The sum of the Settlement Amount plus any interest earned thereon is referred to as the "Settlement Fund." The "Net Settlement Fund" (the Settlement Fund less any taxes, attorneys' fees of up to 35% of the fund, Notice and Administration Costs, Litigation Expenses, and $2,500 incentive fees for each of the four Named Plaintiffs, or other costs and expenses approved by the Court) will be distributed in accordance with the Plan of Allocation that is approved by the Court. As an "Allowed Borrower Claim" in Class GS-5 under the Chapter 11 Plan, the Allowed Claim is estimated under the Disclosure Statement to yield a $0.30 per $1 recovery under the Borrower Claims Trust. Distribution of the Net Settlement Fund is estimated by Plaintiffs' Counsel to yield a recovery of 2.7¢ per $1.00 of Recognized Loss. Class members have been identified from GMACM's records, and distributions from the Net Settlement Fund will be issued to eligible Class Members automatically. Class Members do not have to file proofs of claim with the Settlement Administrator in this Settlement.

Your Legal Rights & Options in This Settlement: Do Nothing—If you wish to participate in the Settlement and receive the benefits to which you are entitled, you do not need to do anything; Submit a Written Request for Exclusion so that it is received no later than May 10, 2016. If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund; Submit a Written Objection so that it is received no later than May 10, 2016. If you do not like any aspect of the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them; Go to a Hearing on May 24, 2016 at 10:00 a.m., and file a Notice of Intention to Appear so that it is received no later than May 10, 2016. Filing a written objection and notice of intention to appear by May 10, 2016 allows you to speak in Court about the fairness of the Settlement, the Plan of Allocation and/or the request for attorneys' fees and reimbursement of Litigation Expenses.

More Information: The full printed Notice of (I) Pendency of Class Action; (II) Proposed Settlement and Plan of Allocation, (III) Settlement Fairness Hearing, and (IV) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice"), as well as copies of the full printed Notice can be downloaded from the website maintained by the Settlement Administrator at www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com. You may also Contact the Settlement Administrator at GMAC Mortgage Lender Placed Insurance Settlement Administrator, P.O. Box 30206, College Station, TX 77842-3206, 1-844-830-5220 Admin@GMACLenderPlacedInsuranceSettlement.com.

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF (I) PENDENCY OF CLASS ACTION;
(II) PROPOSED SETTLEMENT AND PLAN OF ALLOCATION;
(III) SETTLEMENT FAIRNESS HEARING; AND
(IV) MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES

A Federal Bankruptcy Court authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF PENDENCY OF CLASS ACTION: Please be advised that your rights may be affected by a class action settlement that has been proposed in the above-captioned bankruptcy before this Court, if you are a residential mortgage loan borrower whose loan was serviced by GMAC Mortgage, LLC ("GMACM") and from whose payments GMACM recouped or recovered, in whole or part, charges for lender-placed hazard insurance on residential real property ("Lender-Placed Insurance"), including, without limitation, any borrower whose payment was applied, in whole or part, to charges for Lender-Placed Insurance, at any time from February 3, 2004 through October 2, 2013 (the "Class Period").[1]

NOTICE OF SETTLEMENT: The Court-appointed Class Representatives (as defined in Paragraph 9 below), on behalf of themselves and the Settlement Class (as defined in Paragraph 8 below), have reached an agreement to settle the Bankruptcy Proofs of Claim for an allowed unsecured claim not subject to subordination in the amount of $13 million (the "Settlement"). If the Settlement is approved by the Court, all claims asserted by the Named Plaintiffs in the Bankruptcy Proofs of Claim on behalf of themselves and the Settlement Class Members (defined in Paragraph 8 below) against all the Settling Defendants (defined in Paragraph 1 below), as well as other Released Parties, identified in Paragraph 52 below, will be resolved.

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.

1. **Overview of the Proceeding and the Settlement Class:**
The Bankruptcy Proofs of Claim filed by the Named Plaintiffs assert class action claims on behalf of residential mortgage borrowers alleging that they suffered damages as a result of alleged violations of the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq*. ("RICO"), the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq*. ("RESPA"), and applicable state law from being over-charged for force- or lender-placed hazard insurance in connection with loans serviced by GMACM. A more detailed description of the claims alleged in the Bankruptcy Proofs of Claim is set forth in Paragraphs 14-18 below. The "Settling Defendants" are: GMACM, Residential Capital, LLC ("Residential Capital"), and the Borrower Claims Trust.

[1] Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement With Rothstein Plaintiffs dated December 29, 2015 (the "Stipulation"), which is available on the website established for the Settlement at www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com.

The proposed Settlement provides for the release of claims against all the Settling Defendants, as well as certain other parties related to the Settling Defendants, as specified in the Stipulation and as defined more fully in Paragraph 25 below. The Settlement Class consists of all residential mortgage loan borrowers whose loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or part, charges for Lender-Placed Insurance, including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lender-Placed Insurance, at any time from February 3, 2004 through October 2, 2013 (the "Class Period"). Members of the Settlement Class will be affected by the Settlement, if approved by the Court, and may be eligible to receive a payment from the Settlement.

2. **Statement of the Settlement Class' Recovery:**
The parties have agreed to settle all claims asserted by the Named Plaintiffs in the Bankruptcy Proofs of Claim in exchange for an allowed unsecured claim not subject to subordination, represented by Bankruptcy Proof of Claim No. 4074, in the amount of $13 million against GMACM only (the "Allowed Claim"). The Allowed Claim will be an "Allowed Borrower Claim" in Class GS-5, as set forth in the Chapter 11 Plan. Proof of Claim No. 3966 will be disallowed and expunged in its entirety. The sum of the Settlement Amount plus any interest earned thereon is referred to as the "Settlement Fund." The "Net Settlement Fund" (the Settlement Fund less any taxes, attorneys' fees, Notice and Administration Costs, Litigation Expenses, any incentive fees awarded by the Bankruptcy Court to the Named Plaintiffs, or other costs and expenses approved by the Court) will be distributed in accordance with the plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among Settlement Class Members who are eligible to participate in the distribution of the Net Settlement Fund. The proposed plan of allocation (the "Plan of Allocation") is included in this Notice in paragraphs 48-50 below.

3. **Estimate of Average Amount of Recovery**:
As an "Allowed Borrower Claim" in Class GS-5 under the Chapter 11 Plan, the Allowed Claim is estimated under the Disclosure Statement to yield a $0.30 per $1 recovery under the Borrower Claims Trust. Distribution of the Net Settlement Fund is estimated by Plaintiffs' Counsel to yield a recovery of 2.7¢ per $1 of Recognized Loss.

4. **Statement of Potential Outcome of Case**:
The Parties disagree on both liability and damages. The Settling Defendants deny that Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever. The issues on which the Parties disagree with respect to liability include, without limitation: (1) whether Defendants violated RICO through predicate acts of mail or wire fraud; (2) whether Defendants breached any contractual obligations owed to Plaintiffs; (3) whether Defendants breached any obligations of good faith or fair dealing owed to Plaintiffs; and (4) whether Plaintiffs' claims are barred by the filed-rate doctrine. The issues on which the Parties disagree with respect to damages, even assuming that Plaintiffs were to prevail on all liability issues, include, without limitation, whether Defendants proximately caused any injury to Plaintiffs and the amount of damages, if any.

5. **Attorneys' Fees and Expenses Sought**:
Named Plaintiffs intend to seek attorneys' fees not to exceed 35% of the Settlement Fund plus interest, and expenses incurred in connection with the prosecution of this proceeding in the approximate amount of $250,000. *See* How Will The Notice Costs And Expenses Be Paid? in Paragraph 54 below. **Please note that these amounts are only estimates.**

6. **Identification of Attorneys' Representatives:** Named Plaintiffs and the Settlement Class are represented by the law firm of Kirby McInerney LLP, the Court-appointed Class Counsel in the proceeding ("Class Counsel"). Any questions regarding the Settlement should be directed to:

Mark A. Strauss, Esq.
Thomas W. Elrod, Esq.
KIRBY McINERNEY LLP
825 Third Avenue
New York, NY 10022
(212) 371-6600

The Court has appointed a Settlement Administrator, who is also available to answer questions from Settlement Class Members regarding matters contained in this Notice and from whom additional copies of this Notice may be obtained.

GMAC Mortgage Lender Placed Insurance Settlement Administrator
P.O. Box 30206
College Station, TX 77842-3206
1-844-830-5220
www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com
Admin@GMACLenderPlacedInsuranceSettlement.com

Please do not contact any representative of the Settling Defendants or the Bankruptcy Court with questions about the Settlement.

7. **Reasons for the Settlement:** Named Plaintiffs believe that the proposed Settlement is an excellent recovery and is in the best interests of the Settlement Class. The principal reasons for entering into the Settlement are the substantial benefits payable to the Settlement Class. The significant cash benefits under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved. Named Plaintiffs further considered, after conducting substantial investigation into the facts of the case, the risks to proving liability and damages and if successful in doing so, whether a larger judgment could ultimately be obtained. For the Settling Defendants, who deny all allegations of wrongdoing or liability whatsoever (and also deny all allegations that any conduct on their part caused any Settlement Class Members to suffer any damages), the principal reason for entering into the Settlement is to eliminate the expense, risks and uncertainty of further litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING.	If you wish to participate in the settlement and receive the benefits to which you are entitled, you do not need to do anything.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS *RECEIVED* NO LATER THAN MAY 10, 2016.	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS *RECEIVED* NO LATER THAN MAY 10, 2016.	If you do not like any aspect of the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
GO TO A HEARING ON MAY 24, 2016 AT 10:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS *RECEIVED* NO LATER THAN MAY 10, 2016.	Filing a written objection and notice of intention to appear by May 10, 2016 allows you to speak in Court about the fairness of the Settlement, the Plan of Allocation and/or the request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and speak to the Court about your objection.

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WHY DID I GET THIS NOTICE?

8. This Notice is being posted pursuant to an Order of the United States Bankruptcy Court for the Southern District of New York because you have been identified as a member of the Settlement Class certified by the Court, which includes the following persons: all residential mortgage loan borrowers whose loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or part, charges for Lender-Placed Insurance, including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lender-Placed Insurance, at any time from February 3, 2004 through October 2, 2013. The Court has directed us to post this Notice because, as a potential Settlement Class Member, you have a right to know how this Settlement may generally affect your legal rights.

9. A class action is a type of lawsuit in which similar claims of a large number of individuals or entities are resolved together, thereby allowing for the efficient and consistent resolution of the claims of all class members in a single proceeding. In a class action lawsuit, the court appoints one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. In this proceeding, the Court has appointed Named Plaintiffs Landon Rothstein, Jennifer Davidson, Robert Davidson, and Ihor Kobryn to serve as the class representatives (hereinafter "Class Representatives"), and the Court has approved the Class Representatives' selection of the law firm of Kirby McInerney LLP to serve as Class Counsel in the proceeding.

10. The court in charge of this case is the United States Bankruptcy Court for the Southern District of New York, and the case is known as *In re Residential Capital, LLC, et al.,* No. 12-12020 (MG) (S.D.N.Y.). The Judge presiding over this case is the Honorable Martin Glenn, United States Bankruptcy Judge. The persons or entities that are suing are called plaintiffs, and those who are being sued are called defendants. If the Settlement is approved, it will resolve all claims asserted in the Bankruptcy Proofs of Claim by Named Plaintiffs on behalf of Settlement Class Members against all of the Settling Defendants. In this proceeding, there is no pending lawsuit. Instead, the claims have been asserted by the Bankruptcy Proofs of Claim.

11. The purpose of this Notice is to inform you of the existence of this class action, how you might be affected and how to exclude yourself from the Settlement Class if you wish to do so. It is also being posted to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the Settlement, the proposed Plan of Allocation and the motion by Class Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Hearing").

12. The Settlement Hearing will be held on May 24, 2016 at 10:00 a.m., before the Hon. Martin Glenn at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004-1408, to determine, among other things:

    a. whether the proposed Settlement is fair, reasonable and adequate, and should be approved by the Court;

    b. whether all claims asserted in the Bankruptcy Proofs of Claim against the Settling Defendants should be dismissed on the merits and with prejudice, and whether all Released Claims against the Settling Defendants should be released as set forth in the Stipulation;

    c. whether the proposed Plan of Allocation is fair and reasonable, and should be approved by the Court; and

    d. whether Class Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses in connection with the prosecution of the claims asserted against the Settling Defendants and Ally Bank ("Ally") should be approved.

13. This Notice does not express any opinion by the Court concerning the merits of any claim asserted in the Bankruptcy Proofs of Claim, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and the Plan of Allocation, then payments to Settlement Class Members will be made after any appeals are resolved, after the Borrower Claims Trust distributes the Allowed Claim, and after the completion of all distribution processing. Please be patient, as this process can take some time to complete.

WHAT IS THE CASE ABOUT? WHAT HAS HAPPENED SO FAR?

14. On April 30, 2012, the Named Plaintiffs filed a putative class action complaint (the "Initial Complaint") commencing the Rothstein Action (as defined in Paragraph 52 below) against GMACM, GMAC Insurance Marketing, Inc., Balboa Insurance Company, Meritplan Insurance Company, and John Does 1-20 in the United States District Court for the Southern District of New York. The Initial Complaint asserted five causes of action involving violations of RICO (Count I), conspiracy to commit RICO violations (Count II), breach of contract (Count III), breach of the implied covenant of good faith and fair dealing (Count IV), and common law restitution/unjust enrichment/disgorgement (Count V). Counts I, II and V were asserted against all Defendants; Counts III and IV were only asserted against GMACM.

15. On May 14, 2012, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

16. On September 28, 2012, the Named Plaintiffs filed an amended complaint (the "First Amended Complaint"). The First Amended Complaint asserted seven causes of action against Ally Bank, the Balboa Defendants, and a "John Doe Corporation." The First Amended Complaint did not name GMACM or any other Debtor as a defendant. On November 9, 2012, the Named Plaintiffs, individually and purportedly on behalf of the putative class, filed the Bankruptcy Proofs of Claims which referenced the Initial Complaint and the First Amended Complaint.

17. On January 22, 2013, the Named Plaintiffs filed a second amended complaint (the "Second Amended Complaint" and, together with the Initial Complaint and the First Amended Complaint, the "Complaints"). The Second Amended Complaint asserted the following claims: Count I: RICO Violations; Count II: conspiracy to commit RICO violations; Count III: violation of RESPA; Count IV: breach of contract; Count V: breach of the implied covenant of good faith and fair dealing; Count VI: common law restitution/unjust enrichment/disgorgement; and Count VII: breach of fiduciary duty/misappropriation of funds held in trust. Counts I-III are asserted against all defendants; Counts IV-VII are only asserted against Ally. Each of these causes of action is based on the alleged conduct of GMACM but because of the filing of the Bankruptcy Case, GMACM is not named as defendant in the Complaints. The remedies sought by the Named Plaintiffs include equitable relief, including restitution and the imposition of an equitable constructive trust, compensatory damages, treble damages under RICO, and punitive damages, for themselves and on behalf of the putative class.

18. The Named Plaintiffs allege that GMACM conspired with the Balboa Defendants to devise and carry out a scheme to defraud borrowers by inflating the amounts that borrowers purportedly owed in reimbursements in connection with Lender-Placed Insurance on loans serviced by GMACM. The Named Plaintiffs also allege that GMACM received kickbacks from the Balboa Defendants. The Debtors deny both of these allegations.

19. On March 10, 2013, the Balboa Defendants moved to dismiss Counts I-III, the only counts asserted against them. The Named Plaintiffs filed their opposition on March 25, 2013. The Balboa Defendants filed their reply on April 4, 2013. On September 30, 2013, the District Court denied the motion to dismiss with respect to Counts I-II of the Second Amended Complaint (violations of RICO and RICO conspiracy), but granted the motion to dismiss Count III (violations of RESPA). As part of its ruling on the motion to dismiss, the District Court held that the Named Plaintiffs' claims did not violate the filed-rate doctrine.

20. On June 25, 2014, the United States Court of Appeals for the Second Circuit granted a petition filed by the Balboa Defendants for interlocutory appeal of the District Court's ruling with respect to the filed-rate doctrine. On July 22, 2015, the Second Circuit reversed the District Court's ruling with respect to the filed-rate doctrine, held that the filed-rate doctrine did bar the Named Plaintiffs' claims against the Balboa Defendants, and ordered that those claims be dismissed. On August 5, 2015, the Named Plaintiffs filed a petition for panel rehearing and/or rehearing en banc of the Second Circuit's decision. On September 14, 2015, the Named Plaintiffs' petition was denied.

21. On December 21, 2012, Ally filed a motion with the Bankruptcy Court for a finding that the Rothstein Action was stayed as against Ally pursuant to section 362 of the Bankruptcy Code, which motion the Debtors joined. The Named Plaintiffs opposed the motion and filed a cross motion for relief from any applicable stay on April 2, 2013. The Bankruptcy Court held status conferences on the Ally motion on June 12, 2013 and July 10, 2013. On August 8, 2013, Plaintiffs filed an Objection and Reservation of Rights with respect to the Debtors' Disclosure Statement. Ultimately, at the Bankruptcy Court's direction, Ally, the Debtors, and the Committee filed an amended motion that requested an extension of the automatic stay to enjoin the Rothstein Action as against Ally (the "Stay Extension Motion"). Shortly before the Named Plaintiffs' objection deadline, the matter was adjourned until the Plan confirmation hearing of the Chapter 11 Plan by agreement of the parties.

22. On May 13, 2013, the Debtors, the Committee, Ally, and other parties who had asserted billions of dollars in claims against the Debtors entered into a plan support agreement that reflected the culmination of extensive, good faith negotiations mediated by the Honorable James M. Peck. The Debtors' entry into the plan support agreement was approved by the Bankruptcy Court on June 26, 2013. Pursuant to the plan support agreement, the Chapter 11 Plan was filed on August 23, 2013.

23. On December 11, 2013, the Chapter 11 Plan was confirmed. On December 17, 2013, the Plan Effective Date occurred and the Chapter 11 Plan was substantially consummated. Article IX.D of the Chapter 11 Plan, entitled "Third Party Release," provides that, as of the Plan Effective Date, the "holders of Claims and Equity Interests" in the Debtors' estates, which includes the Named Plaintiffs, are "deemed to provide a full and complete discharge and release to the Ally Released Parties . . . from any and all Causes of Action whatsoever . . . arising from or in any way related to the Debtors," including GMACM. The "Ally Released Parties" as defined under the Chapter 11 Plan include, among other parties, Ally. Accordingly, the Chapter 11 Plan released the claims asserted against Ally in the Rothstein Action. On March 6, 2014, the District Court entered an order dismissing the claims against Ally in the Rothstein Action pursuant to Federal Rule of Civil Procedure 41(a) with prejudice and without costs or fees to any party.

24. Plaintiffs' Counsel has thoroughly investigated the facts relating to the claims alleged in the Complaints and the Bankruptcy Proofs of Claim, as well as the events and transactions underlying those claims. Such investigation has included, among other things, examining publicly available information, taking limited informal discovery in the Rothstein Action during the pendency of the Balboa Defendants' motion to dismiss, and obtaining information pursuant to New York's Freedom of Information Law ("FOIL") from the New York State Department of Financial Services (the "NYSDFS"). Additionally, Plaintiffs' Counsel reviewed and analyzed the transcripts of testimony that representatives of GMACM and the Balboa

Defendants gave at public hearings on Lender-Placed Insurance held by the NYSDFS on May 17-21, 2012. Plaintiffs' Counsel has also conducted a thorough analysis of the legal principles applicable to the claims asserted against the Settling Defendants in the Bankruptcy Proofs of Claim. The Settling Debtors' Counsel has also thoroughly investigated the claims and underlying events and transactions alleged in the Complaints and the Bankruptcy Proofs of Claim. Counsel for both sides has researched the law applicable to the claims against the Settling Defendants, including the potential defenses thereto.

25. On the basis of these investigations, counsel for the Named Plaintiffs and Settling Debtors engaged in arms'-length settlement discussions over several months, with extensive involvement by the Committee. Those discussions included a nearly day-long, face-to-face negotiation session on September 9, 2013, which included a representative of GMACM. On September 20, 2013, the Named Plaintiffs and the Settling Debtors, with the consent of the Committee, reached an agreement in principle to resolve the putative class claims asserted by the Named Plaintiffs against the Settling Debtors in the Bankruptcy Proofs of Claim, the terms of which are reflected in the Stipulation. The Named Plaintiffs also agreed to support confirmation of the Chapter 11 Plan. On February 9, 2016, the Court entered an Order Preliminarily Approving Proposed Settlement and Providing for Notice ("Order"), which preliminarily approved the Settlement, authorized this Notice be posted for potential Settlement Class Members and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement. Pursuant to the Court's February 9, 2016 Order, the proceeding was also certified as a Class Proof of Claim with the consent of the Settling Defendants for settlement purposes only.

26. Additionally, in order to effectuate the Settlement, and, specifically, in order to (i) identify the Settlement Class Members and provide them with the best notice practicable under the circumstances, (ii) develop and implement a plan of allocation with respect to the proceeds of the Settlement that is fair and reasonable, and (iii) distribute the proceeds of the Settlement to members of the Settlement Class, the Settling Debtors agreed to produce to Plaintiffs' Counsel data and business records within Debtors' control or reasonably available from Debtors' successors, predecessors, affiliates, and agents pertaining to GMACM's Lender-Placed Insurance transactions (the "Class Data").

27. Prior to the finalization and execution of this Stipulation, Plaintiffs' Counsel and the Settling Debtors engaged in extensive negotiations over the production of the Class Data.

28. In June 2014, the Liquidating Trust, pursuant to a cooperation agreement it maintains with the Borrower Claims Trust, produced the Class Data to Plaintiffs' Counsel in anonymized form, i.e., each borrower was assigned a unique identifying number, with all borrower Personally Identifiable Information ("PII"), including borrower names, mailing addresses, property addresses, and loan account numbers removed. The Borrower Claims Trust retained an electronic "key" file to de-anonymize the Class Data for purposes of effectuating Notice to the Class and of facilitating the allocation and distribution of the Net Settlement Fund to the Settlement Class Members pursuant to the Plan of Allocation.

29. The Class Data was loaded onto the computer system of Plaintiffs' Database Hosting Provider for analysis by Plaintiffs' Forensic Accounting Expert. Under the direction of and in consultation with Plaintiffs' Counsel, and with the assistance of Plaintiff's Database Hosting Provider, Plaintiffs' Forensic Accounting Expert conducted a computerized analysis of the Class Data, which contained information on GMACM's Lender-Placed Insurance transactions and the payment histories of borrowers. By virtue of such analysis, Plaintiffs' Forensic Accounting Expert (i) identified the members of the Settlement Class, and (ii) determined the amounts that GMACM recouped or recovered from those borrowers for Lender-Placed Insurance during the Class Period.

30. More specifically, through the computerized analysis, Plaintiffs' Forensic Accounting Expert identified 143,973 borrowers as members of the Settlement Class, and further determined that GMACM recouped or recovered a total of $321,524,741.25 in Lender-Placed Insurance charges from those borrowers, in the aggregate, during the Class Period. Plaintiff's Counsel states that this amount equals approximately 42.5% of the total $756,601,479.65 of total Lender-Placed Insurance charges that GMACM recorded during the Class Period, according to the computerized analysis conducted by Plaintiffs' Forensic Accounting Expert.

31. Plaintiffs' Forensic Accounting Expert additionally determined that approximately 0.95% of GMACM's total 543,988 Lender-Placed Insurance transactions during the Class Period, which relate to approximately 0.77% of the Lender Placed Insurance charges recorded by GMACM, could not be analyzed by computer due to payment-posting errors and other discrepancies in the Class Data as maintained by GMACM. Those transactions involved only 2,997 borrowers. Under the terms of the Stipulation, those 2,997 additional borrowers are deemed to be Settlement Class Members.

HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?

32. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The "Settlement Class" consists of:

> All residential mortgage loan borrowers whose loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or part, charges for Lender-Placed Insurance, including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lender-Placed Insurance, at any time during the Class Period. Excluded from the Settlement Class are current and former officers, directors, and employees of the Settling Defendants and of the Balboa Defendants, and their immediate families. Also excluded from the Settlement Class are the Settling Defendants' and the Balboa Defendants' legal representatives, heirs, successors or assigns, and any entity in which any defendant has or had a controlling interest.
>
> "Settlement Class Member" means a member of the Settlement Class who does not exclude himself, herself or itself by submitting a request for exclusion in accordance with the requirements set forth in this Notice.

PLEASE NOTE: IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE THE BENEFITS TO WHICH YOU ARE ENTITLED, YOU DO NOT NEED TO DO ANYTHING.

WHAT ARE PLAINTIFFS' REASONS FOR THE SETTLEMENT?

33. Plaintiffs and Class Counsel believe that the claims asserted against the Settling Defendants in this proceeding have substantial merit, and that their legal advocacy and diligent factual investigation have led to a Settlement that reflects a significant recovery under the circumstances.

34. Plaintiffs and Class Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the Settling Defendants, as well as the inherent risks in establishing liability for violations of RICO, RESPA, and applicable state law. Moreover, the Bankruptcy Court's reactions to Plaintiffs' proofs (and the Settling Defendants' responses thereto) on the types of complex issues in this case is inherently difficult to predict. Although Plaintiffs were confident that they would have been able to support their claims with qualified and persuasive expert testimony, Settling Defendants would have almost certainly retained highly experienced experts to argue their various defenses to liability.

35. In addition, even if the Settling Defendants' liability could otherwise be established, Plaintiffs faced serious arguments by the Settling Defendants that any damages that Plaintiffs suffered were caused by the Balboa Defendants and not the Settling Defendants. Accordingly, even if liability were established, there was a real risk that, after a trial of the claims, the Settlement Class would have recovered an amount less than the Settlement Amount – or even nothing at all. There was also a serious risk that the Bankruptcy Court would refuse to certify the Bankruptcy Proof of Claim as a Class Proof of Claim. Additionally, there was a serious risk that the Bankruptcy Court would determine that claims that Plaintiffs asserted were barred by the filed-rate doctrine.

36. In agreeing to the terms of the Settlement, Plaintiffs and Class Counsel weighed the magnitude of the benefits (the Allowed Claim) against the risks that the claims asserted in the Proofs of Claim would be dismissed based on the file-rate doctrine or for insufficiency of proof of the elements of the claims. They have also considered the nature of the various issues that would have been decided by the Court in the event of a trial of the claims, including all of the risks of litigation discussed above.

37. Finally, Plaintiffs and Class Counsel have also considered the fact that the Chapter 11 Plan contains releases and injunctions in favor of the Settling Defendants, and that, by operation of the Plan Releases, claims of absent class members who have not filed proofs of claim in the bankruptcy prior to the deadline established for filing proofs of claim in the Chapter 11 Cases may be released.

38. In light of the amount of the Settlement and the benefits of immediate and certain recovery to the Settlement Class as compared to the risks and uncertainties of ever obtaining a superior recovery at some indeterminate date in the future, Plaintiffs and Class Counsel strongly believe that the proposed Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class. Indeed, they respectfully submit that the Settlement achieved represents a truly outstanding result for the Settlement Class.

39. The Settling Defendants have vigorously denied the claims asserted against them in the Bankruptcy Proofs of Claim and vigorously deny having engaged in any wrongdoing or violation of law of any kind whatsoever. The Settling Defendants state that they are entering into this Settlement solely to eliminate the uncertainties, burden and expense of further protracted litigation, and the Stipulation with which they have agreed provides that the Settlement shall not be construed as an admission of any wrongdoing by any of the Settling Defendants or counsel for any of the Settling Defendants.

HOW MUCH WILL MY PAYMENT BE?

40. After approval of the Settlement by the Court and upon satisfaction of the other conditions to the Settlement, the Net Settlement Fund will be distributed to Settlement Class Members in accordance with the Plan of Allocation approved by the Court. Under the proposed Plan of Allocation, the Net Settlement Fund shall be allocated to Settlement Class Members *pro rata* based on the Recognized Loss of each Settlement Class Member relative to the total Recognized Losses of all Settlement Class Members.

41. You can calculate your Recognized Loss in accordance with the formula set forth below in the proposed Plan of Allocation. Because the aggregate Recognized Losses of all Settlement Class Members exceed the Net Settlement Fund, your share of the Net Settlement Fund will be proportionally less than your calculated Recognized Loss. The payment you get will be that proportion of the Net Settlement Fund equal to your Recognized Loss divided by the total Recognized Losses of all Settlement Class Members (the "*Pro Rata* Share"). *See* the Plan of Allocation on pages 10-11 for more information on your Recognized Loss.

42. The Settling Defendants have agreed to pay the Settlement Amount. The Settlement Amount will be deposited into an interest-bearing escrow account. If the Settlement is approved by the Bankruptcy Court, the Net Settlement Fund will be distributed to Settlement Class Members upon entry of the Class Distribution Order by the Bankruptcy Court and will distribute the Net Settlement Fund to the members of the Settlement Class as set forth in the proposed Plan of Allocation or such other plan as the Court may approve. The Settlement Administrator shall determine each Settlement Class Member's *Pro Rata* Share of the Net Settlement Fund based upon each Settlement Class Member's Recognized Loss. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Settlement Class Members. The Net Settlement Fund shall be distributed to Settlement Class Members whose allocation is $10 or more.

43. The Net Settlement Fund will not be distributed until after the Borrower Claims Trust has distributed the full Settlement Amount to the Escrow Agent (it being contemplated that the Borrower Claims Trust may potentially make one or more interim, partial distributions). The Net Settlement Fund will then be distributed simultaneously with any additional recovery(ies) obtained on behalf of the Settlement Class from the Balboa Defendants in the Rothstein Action. However, provided that the Borrower Claims Trust

has distributed the full Settlement Amount to the Escrow Agent, in no event shall the distribution procedure commence later than 36 months following the Settlement Effective Date (as defined in the Stipulation), absent further agreement of the Settling Parties or order of the Bankruptcy Court for cause.

44. Neither the Settling Defendants nor the Debtors' estates shall have any right to the return of the Settlement Fund or any portion thereof after the Settlement Amount has been remitted to the Escrow Agent, irrespective of the amount or value of the distributions or uncashed distributions to the members of the Settlement Class from the Net Settlement Fund. The Settling Defendants shall not have any liability, obligation or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund or the Plan of Allocation.

45. Approval of the Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the Settlement, if approved.

46. Only those Settlement Class Members whose residential mortgage loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or in part, charges for Lender-Placed Insurance, including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lender-Placed Insurance, at any time during the Class Period, will be eligible to share in the distribution of the Net Settlement Fund. If you wish to participate in the settlement and receive the benefits to which you are entitled, you do not need to do anything. However, if you do <u>not</u> wish to participate in the settlement and do not wish to be bound by the release provisions and other provisions of the proposed settlement, you must exclude yourself from the Settlement Class pursuant to the instructions set forth below at Paragraphs 59-63.

47. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class will not be eligible to receive a distribution from the Net Settlement Fund.

PROPOSED PLAN OF ALLOCATION

48. The Plan of Allocation has been prepared by Plaintiffs and Class Counsel. The Net Settlement Fund shall be allocated to Settlement Class Members *pro rata* based on the Recognized Loss of each Settlement Class Member relative to the total Recognized Losses of all Settlement Class Members. The Recognized Loss of each Settlement Class Member shall be equal to 25% of the total amount that GMACM recouped or recovered from the loan payments of that Settlement Class Member for Lender-Placed Insurance during the Class Period, as determined by the computerized analysis of the Class Data conducted by Plaintiffs' Forensic Accounting Expert. With respect to the Lender-Placed Insurance transactions that Plaintiffs' Forensic Accounting Expert determined are not capable of computerized analysis, the amounts recouped or recovered by GMACM from each effected Settlement Class Member shall be deemed to be 42% of the Lender-Placed Insurance charge that GMACM recorded for that Settlement Class Member. This percentage reflects the rate at which GMACM recouped or recovered Lender-Placed Insurance charges from borrowers in the aggregate during the Class Period, according to the computerized analysis conducted by Plaintiffs' Forensic Accounting Expert. The Recognized Loss formula is not intended to be an estimate of the amount that will be paid to Settlement Class Members pursuant to the Settlement. The Recognized Loss formula is simply the basis upon which the Net Settlement Fund will be proportionately allocated to Settlement Class Members.

Settlement Class Members whose allocation is $10 or more will receive a distribution. Because of the administrative costs of issuing checks and the fact very small checks in class action settlements are often not cashed, Settlement Class Members whose allocation is less than the $10 threshold shall not receive a distribution. The total of all Settlement Class Member allocations below $10 will constitute a gross-up residual. This gross-up residual shall be re-allocated among the Settlement Class Members whose allocation is $10 or more in accordance with their Recognized Losses. Plaintiffs' Counsel estimates that, under this distribution methodology, and assuming that there is no recovery from the Balboa Defendants in the Rothstein Action to be included in the distribution to the Settlement Class, approximately 61,788 of the total 143,973 Settlement Class Members will receive distributions, and additionally, that the residual gross-up will constitute approximately 17% of the Net Settlement Fund.

If any funds remain in the Net Settlement Fund by reason of uncashed distributions or otherwise, then after the Settlement Administrator has made reasonable and diligent efforts to have Settlement Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be redistributed to Settlement Class Members who have cashed their initial distributions in a manner consistent with the Plan of Allocation. The Settlement Administrator, after consultation with and under the direction of Plaintiffs' Counsel, shall, if, in Plaintiffs' Counsel's judgment it is economically feasible, continue to reallocate any further balance remaining in the Net Settlement Fund after the redistribution is completed among Settlement Class Members in the same manner and time frame as provided for above. In the event that Plaintiffs' Counsel determines that further redistribution of any balance remaining (following the initial distribution and redistribution) is no longer economically feasible, thereafter Plaintiffs' Counsel shall donate the remaining funds, if any, to a non-sectarian charitable organization(s) certified under the United States Internal Revenue Code § 501(c)(3), to be selected by the Named Plaintiffs and approved by the Bankruptcy Court or District Court, as applicable.

49. Payment pursuant to this Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Settlement Class Members. No person shall have any claim against Plaintiffs, the Settling Defendants, the Borrower Claims Trust, the Borrower Claims Trustee, the Borrower Claims Trust Committee or any of their respective counsel, based on the distributions made substantially in accordance with the Stipulation and/or orders of the Bankruptcy Court or the District Court. Except as otherwise provided, the Named Plaintiffs, the Settling Defendants, the Borrower Claims Trust, the Borrower Claims Trustee, the Borrower Claims Trust Committee and their respective counsel shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes owned by the Settlement Fund, or any losses incurred in connection therewith.

50. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Plaintiffs and Class Counsel after consultation with their experts. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. The Court will retain jurisdiction over the Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented. Any orders regarding any modification of the Plan of Allocation will be posted on the settlement website, www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com and Class Counsel's website at www.kmllp.com.

WHAT RIGHTS AM I GIVING UP BY REMAINING IN THE SETTLEMENT CLASS?

51. If you remain in the Settlement Class, you will be bound by any orders issued by the Court. For example, if the Settlement is approved, the Court will enter a judgment (the "Judgment"), which will dismiss on the merits with prejudice the claims against the Settling Defendants and will provide that Named Plaintiffs individually and on behalf of the Settlement Class who have not timely and validly opted out in accordance with the requirements set forth in the Notice of Class Action, that, among other things, shall by operation of the Judgment have, fully, finally, and forever released, relinquished and discharged (regardless of whether they receive distributions) (1) all Released Claims (as defined in Paragraph 52 below) against the Released Parties (as defined in Paragraph 52 below); and (2) against each and all of the Released Parties all claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the Action or Released Claims. All Settlement Class Members are hereby permanently barred and enjoined from bringing any action against any and all Released Parties concerning any and all of the Released Claims. This release shall not apply to any Person who has timely and validly requested exclusion from the Settlement Class in accordance with the instructions set forth in Paragraph 59 below.

52. As described in more detail below, the Released Claims are any and all claims which (a) relate to alleged kickbacks, inflated reimbursements or inflated rates in whatever form for Lender-Placed Insurance; (b) were asserted or could have been asserted in the Rothstein Action or the Bankruptcy Proofs of Claim

against the Released Parties; or (c) were or could have been asserted by any Person eligible to be a Settlement Class Member which relate to alleged kickbacks, inflated reimbursements or inflated rates in whatever form for Lender-Placed Insurance, unless such Person has opted out of the Settlement and has otherwise filed a proof of claim prior to the deadline established by the Bankruptcy Court for filing proofs of claim in the Chapter 11 Cases that has not been expunged or disallowed.

"Released Claims" means:

1) any and all claims, including without limitation any proof of claim filed in the Chapter 11 Cases, Unknown Claims, demands, rights, liabilities, and causes of action of every nature and description, known or unknown, suspected or unsuspected, contingent or non-contingent, matured or unmatured, whether or not concealed or hidden, which now exist, or heretofore have existed, whether arising under federal, state, common or foreign law, that Plaintiffs, or any Settlement Class Member have had, filed or asserted in the past, or now have or assert against the Released Parties, which (a) relate to alleged kickbacks, inflated reimbursements or inflated rates in whatever form for Lender-Placed Insurance; (b) were asserted or could have been asserted in the Rothstein Action or the Bankruptcy Proofs of Claim against the Released Parties; or (c) were or could have been asserted by any Person eligible to be a Settlement Class Member which relate to alleged kickbacks, inflated reimbursements or inflated rates in whatever form for Lender-Placed Insurance, unless such Person has opted out of the Settlement and has otherwise filed a proof of claim prior to the deadline established by the Bankruptcy Court for filing proofs of claim in the Chapter 11 Cases that has not been expunged or disallowed. "Released Claims" shall not include any claims against any Non-Settling Defendant in the Rothstein Action.

"Released Parties" means:

1) the Borrower Claims Trust, the Borrower Claims Trustee, the "Trust Committee" (as such term is defined in the ResCap Borrower Claims Trust Agreement dated December 17, 2014 and filed in Chapter 11 Cases as Dkt. #6136-3) and the members of the Trust Committee (collectively, the Trust Committee and its members "Borrower Claims Trust Committee"), the Liquidating Trust, Settling Defendants and their parents, subsidiaries, and affiliates and all of their respective past, current, and future respective directors, officers, employees, partners, insurers, co-insurers, reinsurers, agents, controlling shareholders, shareholders, attorneys, accountants, auditors, advisors, investment advisors, personal or legal representatives, predecessors, divisions, joint ventures, spouses, heirs, related or affiliated entities, and any entity in which any Settling Defendant has a controlling interest, and all of their respective property. "Released Parties" shall not include any Non-Settling Defendant.

"Rothstein Action" means the litigation in the District Court captioned *Landon Rothstein, individually and on behalf of all others similarly situated v. GMAC Mortgage, LLC, et al.*, No. 12-cv-3412 (S.D.N.Y. Apr. 30, 2012).

"Unknown Claims" means any and all potential Released Claims that the Named Plaintiffs and/or any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her or it might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to object to this Stipulation or not exclude himself, herself or itself from the Settlement Class. With respect to any and all Released Claims, the parties stipulate and agree that, upon the Settlement Effective Date, the Named Plaintiffs shall expressly waive, and each Settlement Class Member shall be deemed to have waived, and by operation of the Final Approval Order shall have expressly waived, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by Cal. Civ. Code § 1542 (to the extent it applies to the Rothstein Action), and any law of any state or territory of the United States, or principle of common law, or the law of any foreign jurisdiction, that is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Named Plaintiffs and Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Named Plaintiffs shall expressly fully, finally and forever settle and release – and each Settlement Class Member, upon the Settlement Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have fully, finally and forever settled and released – any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Named Plaintiffs acknowledge, and Settlement Class Members by law and operation of the Final Approval Order shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims was separately bargained for and was a material element of the settlement.

WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?

53. Class Counsel and other counsel for Named Plaintiffs in this proceeding have not received any payment for their services in pursuing claims against the Settling Defendants and Ally on behalf of the Settlement Class, nor have they been reimbursed for their out-of-pocket expenses. Prior to the Settlement Hearing (see Paragraph 12 above), Class Counsel will apply to the Court for an award of attorneys' fees on behalf of itself and Plaintiffs' Special Bankruptcy Counsel in an amount not to exceed 35% of the Settlement Fund. In addition, Class Counsel will apply for reimbursement of Litigation Expenses paid or incurred by Class Counsel and Plaintiffs' Special Bankruptcy Counsel in connection with the institution, prosecution and resolution of the claims asserted against the Settling Defendants and Ally, in the approximate amount of $250,000 (in addition to an application for the payment of an incentive award of $2,500 each to the Named Plaintiffs in recognition of services rendered by the Named Plaintiffs for the benefit of the Settlement Class), plus interest on such expenses at the same rate as earned on the Settlement Amount.

HOW WILL THE NOTICE COSTS AND EXPENSES BE PAID?

54. Class Counsel are authorized by the Stipulation to pay the Settlement Administrator's fees and expenses incurred in connection with giving notice, administering the Settlement, and distributing the Net Settlement Fund to Settlement Class Members.

HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

55. If you wish to participate in the settlement fund and receive the benefits to which you are entitled, you do not need to do anything. If you request exclusion from the Settlement Class, you will not be eligible to share in the Net Settlement Fund.

56. As a Settlement Class Member you are represented by the Named Plaintiffs and Class Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?," below, so that the notice is ***received*** on or before May 10, 2016.

57. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, "What If I Do Not Want to Participate in the Settlement? How Do I Exclude Myself?," below.

58. If you are a Settlement Class Member and you wish to object to any aspect of the Settlement, the Plan of Allocation, or Class Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?," below.

WHAT IF I DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT? HOW DO I EXCLUDE MYSELF?

59. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written "Request for Exclusion" from the Settlement Class, addressed to GMAC Mortgage Lender Placed Insurance Settlement Administrator EXCLUSIONS, P.O. Box 30206, College Station, TX 77842-3206. The exclusion request must be *received* no later than May 10, 2016. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must (1) state the name, address and telephone number of the person or entity requesting exclusion; (2) state that such person or entity "requests exclusion from the Settlement Class in *In re Residential Capital, LLC, et al.*, No. 12-12020 (Bankr. S.D.N.Y.) (MG)"; (3) state the address of the property that was subject to Lender-Placed Insurance; (4) state the loan number; and (5) be signed by such person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

60. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration or other proceeding relating to any Released Claim against any of Settling Defendants. You cannot exclude yourself by telephone or by email. Please note however, that you are otherwise enjoined from commencing any such lawsuit, arbitration or other proceeding by the Chapter 11 Plan and orders of the Bankruptcy Court.

61. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund, or any other benefit provided for in the Stipulation.

62. The Plan Releases may bar the claims of Settlement Class Members who exclude themselves unless they filed a proof of claim in the Chapter 11 Cases by the deadline established by the Bankruptcy Court for filing a proof of claim.

63. The Settling Defendants have the right to terminate the Settlement if the number of valid written requests for exclusion received from persons and entities entitled to be members of the Settlement Class exceeds 5% of the Settlement Class.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

64. **Settlement Class Members may, but do not need to, attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if the Settlement Class Member does not attend the Settlement Hearing. You can participate in the Settlement without attending the Settlement Hearing.**

65. The Settlement Hearing will be held on May 24, 2016 at 10:00 a.m. before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004. At the Settlement Hearing the Court will decide, among other things, whether to

approve the Settlement, the Plan of Allocation and an award of attorneys' fees and reimbursement of Litigation Expenses in connection with the prosecution of the claims asserted against the Settling Defendants and Ally. If the Court approves the Settlement, there may then be appeals by interested parties, which may further delay distribution of the Net Settlement Fund. It is always uncertain how those appeals will resolve, and resolving them can take time, perhaps more than a year. The Court reserves the right to approve the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

66. Any Settlement Class Member who does not request exclusion may object to any aspect of the Settlement, the proposed Plan of Allocation or Class Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses in connection with the prosecution of the claims asserted against the Settling Defendants and Ally. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States Bankruptcy Court for the Southern District of New York at the address set forth below on or before May 10, 2016. You must also serve the papers on designated representative Class Counsel and Settling Defendants' counsel at the addresses set forth below for their respective counsel so that the papers are ***received*** **on or before May 10, 2016**.

Clerk's Office	**Settling Defendants' Counsel**	**Class Counsel**
Clerk of the Court United States Bankruptcy Court Southern District of New York One Bowling Green New York, NY 10004-1408 Re: *In re Residential Capital, LLC, et al.*, Case No. 12-12020 (MG)	Norman S. Rosenbaum, Esq. Morrison & Foerster LLP 250 West 55th Street New York, NY 10019	Mark A. Strauss, Esq. Thomas W. Elrod, Esq. Kirby McInerney LLP 825 Third Avenue New York, NY 10022

67. Any objection (1) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (2) must include documents sufficient to prove membership in the Settlement Class, including the address of the property that is subject to Lender-Placed Insurance and the loan number. You may not object to any aspect of the Settlement, the Plan of Allocation or the motion for attorneys' fees and reimbursement of expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

68. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed and served a timely written objection in accordance with the procedures described above, unless the Court orders otherwise.

69. If you wish to be heard orally at the hearing in opposition to the approval of any aspect of the Settlement, the Plan of Allocation or Class Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on the designated representatives of Class Counsel and counsel for the Settling Defendants at the addresses set forth above so that it is ***received*** on or before May 10, 2016. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

70. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. If you decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court and serve it on the designated representatives of Class Counsel and counsel for the Settling Defendants at the addresses set forth above so that the notice is ***received*** on or before May 10, 2016.

71. The Settlement Hearing may be adjourned by the Court without further written notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Class Counsel.

Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to any aspect of the proposed Settlement, the proposed Plan of Allocation or Class Counsel's request for an award of attorneys' fees and reimbursement of expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

WHAT HAPPENS IF I DO NOTHING AT ALL?

72. If you do nothing and you are a member of the Settlement Class, you will receive the benefits to which you are entitled.

73. If you are a Settlement Class Member and you do not exclude yourself from the Settlement, you will be bound by the terms of the proposed Settlement described in this Notice once approved by the Court. This means that each Settlement Class Member releases the Released Claims (as defined above) against the Released Parties (as defined above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Claims against any of the Settling Defendants.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

74. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this proceeding, you are referred to the papers on file in the proceeding, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004-1408. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Settlement Administrator, www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com. Bankruptcy Court filings and other records relating to the Chapter 11 Cases may be found on a website maintained at the direction of the Debtors at https://www.kccllc.net/rescap.

All inquiries concerning this Notice should be directed to:

GMAC Mortgage Lender Placed Insurance Settlement Administrator
P.O. Box 30206
College Station, TX 77842-3206
1-844-830-5220
www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com
Admin@GMACLenderPlacedInsuranceSettlement.com

and/or

Mark A. Strauss, Esq.
Thomas W. Elrod, Esq.
KIRBY McINERNEY LLP
825 Third Avenue
New York, NY 10022
(212) 371-6600

DO NOT CALL OR WRITE THE BANKRUPTCY COURT OR THE OFFICE OF THE CLERK OF THE COURT REGARDING THIS NOTICE.

Dated: February 22, 2016

By Order of the Court
United States Bankruptcy Court
Southern District of New York

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION; (II) PROPOSED SETTLEMENT AND PLAN OF ALLOCATION; (III) SETTLEMENT FAIRNESS HEARING; AND (IV) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: All residential mortgage loan borrowers whose loans were serviced by GMAC Mortgage, LLC ("GMACM") and from whose payments GMACM recouped or recovered, in whole or part, charges for lender-placed hazard insurance on residential real property ("Lender-Placed Insurance"), including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lender-Placed Insurance, at any time from February 3, 2004 through October 2, 2013 (the "Class Period").

THIS NOTICE WAS AUTHORIZED BY THE BANKRUPTCY COURT. IT IS NOT A LAWYER SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY, YOUR RIGHTS MAY BE AFFECTED BY A CLASS ACTION SETTLEMENT THAT HAS BEEN PROPOSED IN THE ABOVE-CAPTIONED BANKRUPTCY BEFORE THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 7023 and 9019 of the Federal Rules of Bankruptcy Procedure and an Order of the United States Bankruptcy Court for the Southern District of New York, (i) that Bankruptcy Proof of Claim No. 4074 (the "Bankruptcy Proof of Claim") in the above-captioned bankruptcy has been preliminarily certified as a Class Proof of Claim on behalf of a class of all residential mortgage loan borrowers whose loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or in part, charges for Lender-Placed Insurance, including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lenders-Placed Insurance, at any time during the Class Period (the "Settlement Class"), except for certain persons and entities who are excluded from the Settlement Class, as defined in the Stipulation and Agreement of Settlement With Rothstein Plaintiffs (the "Stipulation"); and (ii) that the Court-Appointed Class Representatives, as defined in the Stipulation, have reached an agreement to settle the Bankruptcy Proofs of Claim for an allowed unsecured claim not subject to subordination in the amount of $13 million against GMAC only (the "Allowed Claim"). The Allowed Claim will be an "Allowed Borrower Claim" in Class GS-5, as set forth in the Chapter 11 Plan.

A hearing will be held on May 24, 2016 at 10:00 a.m before the Honorable Martin Glenn at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004-1408, to determine, among other things: (i) whether the proposed settlement should be approved as fair, reasonable and adequate; (ii) whether the Bankruptcy Proof of Claim should be dismissed on the merits and with prejudice against all the Settling Defendants, and whether the releases specified and described in the Stipulation should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Class Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved.

If you are a member of the Settlement Class, your rights will be affected by the Proceeding and the settlement, and you may be entitled to share in the Settlement Fund. If you have not yet received the Summary Direct U.S. Mail Postcard Notice that refers to, among others, the full printed Notice of (I) Pendency of Class Action; (II) Proposed Settlement and Plan of Allocation, (III) Settlement Fairness Hearing, and (IV) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice"), copies of the full printed Notice can be downloaded from the website maintained by the Claims Administrator at www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com.

If you are a member of the Settlement Class and you wish to participate in the settlement and receive the benefits to which you are entitled, you do not need to do anything. By participating in the settlement, you will be bound by the release provisions and other provisions of the proposed settlement including any judgments or orders entered by the Court.

However, if you are a member of the Settlement Class and do not wish to participate in the settlement and do not wish to be bound by the release provisions and other provisions of the proposed settlement, you must submit a request for exclusion from the Settlement Class such that it is *received* no later than May 10, 2016, in accordance with the instructions set forth in the Notice. If you properly and timely exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Proceeding and you will not be eligible to share in the proceeds of the settlement. Please note however, that you will be otherwise enjoined from commencing any such lawsuit, arbitration or other proceeding by the Chapter 11 Plan and orders of the Bankruptcy Court.

Any objections to any aspect of the proposed settlement, the proposed Plan of Allocation or Lead Class Counsel's application for an award of attorneys' fees and reimbursement of expenses must be filed with the Court and delivered to designated representative Lead Class Counsel and counsel for the Settling Defendants such that they are *received* no later than May 10, 2016, in accordance with the instructions set forth in the Notice.

PLEASE DO NOT CONTACT THE BANKRUPTCY COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE. Inquiries, other than requests for the Notice, may be made to Class Counsel:

Mark A. Strauss, Esq.
Thomas W. Elrod, Esq.
KIRBY McINERNEY LLP
825 Third Avenue
New York, NY 10022
(212) 371-6600

Dated: February 23, 2016

By Order of the United States Bankruptcy Court for the Southern District of New York

Exhibit D

Kirby McInerney LLP Announces Proposed Settlement with the Rothstein Plaintiffs in GMAC Mortgage, LLC Class Action Litigation

NEW YORK, Feb. 23, 2016 /PRNewswire/ --

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE RESIDENTIAL CAPITAL, LLC, et al., Debtors.	Case No. 12-12020 (MG) Chapter 11 Jointly Administered

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION;
(II) PROPOSED SETTLEMENT AND PLAN OF ALLOCATION;
(III) SETTLEMENT FAIRNESS HEARING; AND (IV) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: All residential mortgage loan borrowers whose loans were serviced by GMAC Mortgage, LLC ("GMACM") and from whose payments GMACM recouped or recovered, in whole or part, charges for lender-placed hazard insurance on residential real property ("Lender-Placed Insurance"), including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lender-Placed Insurance, at any time from February 3, 2004 through October 2, 2013 (the "Class Period").

THIS NOTICE WAS AUTHORIZED BY THE BANKRUPTCY COURT. IT IS NOT A LAWYER SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY, YOUR RIGHTS MAY BE AFFECTED BY A CLASS ACTION SETTLEMENT THAT HAS BEEN PROPOSED IN THE ABOVE-CAPTIONED

BANKRUPTCY BEFORE THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 7023 and 9019 of the Federal Rules of Bankruptcy Procedure and an Order of the United States Bankruptcy Court for the Southern District of New York, (i) that Bankruptcy Proof of Claim No. 4074 (the "Bankruptcy Proof of Claim") in the above-captioned bankruptcy has been preliminarily certified as a Class Proof of Claim on behalf of a class of all residential mortgage loan borrowers whose loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or in part, charges for Lender-Placed Insurance, including, without limitation, any borrowers whose payments were applied, in whole or part, to charges for Lenders-Placed Insurance, at any time during the Class Period (the "Settlement Class"), except for certain persons and entities who are excluded from the Settlement Class, as defined in the Stipulation and Agreement of Settlement With Rothstein Plaintiffs (the "Stipulation"); and (ii) that the Court-Appointed Class Representatives, as defined in the Stipulation, have reached an agreement to settle the Bankruptcy Proofs of Claim for an allowed unsecured claim not subject to subordination in the amount of $13 million against GMAC only (the "Allowed Claim"). The Allowed Claim will be an "Allowed Borrower Claim" in Class GS-5, as set forth in the Chapter 11 Plan.

A hearing will be held on May 24, 2016 at 10:00 a.m. before the Honorable Martin Glenn at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004-1408, to determine, among other things: (i) whether the proposed settlement should be approved as fair, reasonable and adequate; (ii) whether the Bankruptcy Proof of Claim should be dismissed on the merits and with prejudice against all the Settling Defendants, and whether the releases specified and described in the Stipulation should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Class Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved.

If you are a member of the Settlement Class, your rights will be affected by the Proceeding and the settlement, and you may be entitled to share in the Settlement Fund. If you have not yet received the Summary Direct U.S. Mail Postcard Notice that refers to, among others, the full printed Notice of (I) Pendency of Class Action; (II) Proposed Settlement and Plan of Allocation, (III) Settlement Fairness Hearing, and (IV) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice"), copies of the full printed Notice can be downloaded from the website maintained by the Claims Administrator at www.GMACMortgageLenderPlacedInsuranceClassActionSettlement.com (http://www.gmacmortgagelenderplacedinsuranceclassactionsettlement.com/).

If you are a member of the Settlement Class and you wish to participate in the settlement and receive the benefits to which you are entitled, you do not need to do anything. By participating in the settlement, you will be bound by the release provisions and other provisions of the proposed settlement including any judgments or orders entered by the Court.

However, if you are a member of the Settlement Class and do not wish to participate in the settlement and do not wish to be bound by the release provisions and other provisions of the proposed settlement, you must submit a request for exclusion from the Settlement Class such that it is *received* no later than May 10, 2016, in accordance with the instructions set forth in the Notice. If you properly and timely exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Proceeding and you will not be eligible to share in the proceeds of the settlement. Please note however, that you will be otherwise enjoined from commencing any such lawsuit, arbitration or other proceeding by the Chapter 11 Plan and orders of the Bankruptcy Court.

Any objections to any aspect of the proposed settlement, the proposed Plan of Allocation or Lead Class Counsel's application for an award of attorneys' fees and reimbursement of expenses must be filed with the Court and delivered to designated representative Lead Class Counsel and counsel for the Settling Defendants such that they are *received* no later than May 10, 2016, in accordance with the instructions set forth in the Notice.

PLEASE DO NOT CONTACT THE BANKRUPTCY COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE. Inquiries, other than requests for the Notice, may be made to Class Counsel:

Mark A. Strauss, Esq.
Thomas W. Elrod, Esq.
KIRBY McINERNEY LLP
825 Third Avenue
New York, NY 10022
(212) 371-6600

Dated: February 23, 2016 By Order of the United States Bankruptcy Court for the Southern District of New York

SOURCE Kirby McInerney LLP

Exhibit E

10 CELEBRITY MOMENTS TO WATCH FOR AT THE OSCARS

We're not all parsing the Oscar odds, OK? Come Sunday, many celeb-watchers will be tuning in (ABC, 7 p.m. ET/4 PT) for the gasp-worthy fashion, the off-the-cuff speeches and the A-list dates. USA TODAY's **Andrea Mandell** looks at 10 starry moments to watch for on Hollywood's biggest night.

10. A POWER-COUPLE STROLL
Will we get a Brangelina red-carpet moment? Brad Pitt is a producer on *The Big Short*, which is up for five nominations (including best picture). It's looking likely: Pitt showed up for a surprise appearance at the Golden Globes, not to mention he and Jolie attended the Academy Awards together in 2014, back when he produced *12 Years a Slave*. So here's hoping.

9. BITTERSWEET GOODBYES
Grab a hanky. The *In Memoriam* segment this year will say goodbye to many revered talents, probably including Alan Rickman, Leonard Nimoy, Christopher Lee, Omar Sharif, Robert Loggia and Wes Craven. *The Artist* pup Uggie died last year, too.

8. GRAMMYS LITE?
Lady Gaga, Sam Smith and The Weeknd are pitted against one another in the best-original-song category, and they're set to perform, too. We're just praying there will be no Grammys-style technical difficulties.

7. COMEDIANS BRINGING IT
Let's be honest — it's off-the-cuff moments that make live shows fun. We're looking to host Chris Rock and presenters Louis C.K., Kevin Hart and Tina Fey to keep us laughing.

6. GOWNS GALORE
The red carpet will be haute with fashion favorites, including nominees Cate Blanchett, Alicia Vikander (a face of Louis Vuitton), Saoirse Ronan, Jennifer Lawrence (who has long had a Dior contract), Kate Winslet and Rooney Mara. Will glam presenters such as Kerry Washington, Charlize Theron and Reese Witherspoon stick to safer, muted palettes (we can take only so many black dresses) or show up in something splashier?

5. COUPLES TO WATCH
Low-key couple Michael Fassbender and Alicia Vikander, both nominees, avoided the kiss cam at the BAFTAs last weekend, but maybe they're just waiting for the Oscars to finally walk the carpet together? We're also curious who Jennifer Lawrence's plus-one is (in the past, she has brought her best friend). Same goes for Leonardo DiCaprio, who typically brings his mom.

4. SCENE STEALERS
In between taking selfies with Rachel McAdams and Gaga, 9-year-old *Room* star Jacob Tremblay has charmed everyone from Conan O'Brien to cynical journalists this awards season. (Example: "I know where to put this: on the shelf right beside my Millennium Falcon," he said sweetly at the Critics' Choice podium.) Keep an eye out for the adorable kid in the tux.

3. ROCKY REDUX
The original *Rocky* won best picture, but Sylvester Stallone missed out on acting and screenplay awards. With a Globes win under his belt for *Creed*, will the Italian Stallion finally take home an acting statuette with his name on it? (One thing's for sure: This time he won't forget to thank director Ryan Coogler.)

2. 'TITANIC' WINS?
It will be shocking if DiCaprio *doesn't* win for *The Revenant*, but imagine if Kate Winslet wins, too, for *Steve Jobs*! It happened at the Globes, and we would pay good money to hear Jack or Rose crack a *Titanic* pun at the podium.

1. ROCK'S UNMISSABLE OPENING MONOLOGUE
You'd better be in your seats for the first 10 minutes, because all eyes are on Rock's likely history-making opening monologue, which undoubtedly will castigate those responsible for #OscarsSoWhite. In the words of Don Cheadle: "This is (Rock's) sweet spot. He's smart, he's loud, he's skewering, and he's judicious about who gets it. Everybody will get it." Tune in.

PITT AND JOLIE BY DAN MACMEDAN, USA TODAY; VIKANDER AND FASSBENDER BY GETTY IMAGES; BLANCHETT BY JUSTIN TALLIS, AFP/GETTY IMAGES; ROCK BY KEVIN WINTER, GETTY IMAGES, FOR BET; DICAPRIO AND WINSLET BY DIMITRIOS KAMBOURIS, GETTY IMAGES, FOR TURNER

COUNTDOWN: CATCH UP ON THE TOP CONTENDERS

Andrea Mandell
USA TODAY

Late to the Oscars game? We've got your back. Here's a look at streaming and video-on-demand options for some of the hottest awards-nominated titles.

NETFLIX
Oscar-nominated documentaries abound on Netflix, including *Winter on Fire*, *What Happened Miss Simone?* and *Cartel Land*, plus documentary shorts *Last Day of Freedom*, *Chau, Beyond the Lines* and the animated short *World of Tomorrow*. Plus, you can still check out the Netflix original *Beasts of No Nation* to see why critics were so riled up about Idris Elba's supporting-actor snub.

HBO
HBO (and its digital arms HBO Go and HBO Now) is offering *Mad Max: Fury Road* (nominated for 10 Oscars) and *Fifty Shades of Grey* (hey, it's up for best original song). On HBO Go and HBO Now, subscribers also will find past Oscar-winning fare like *Milk* and *The Departed*. Just look for a collection called 63 Oscars, a title that notes how many golden statues those movies won.

TIME WARNER CABLE
Subscribers are in luck: You can catch up on awards season quickly via Time Warner's special Awards Season movies on demand category, featuring 30 Oscar-nominated films available for rent ($3.99-$5.99), including *Straight Outta Compton*, *The Martian*, *Amy*, *Mad Max: Fury Road* and *Steve Jobs*. Snubbed fare is available, too, including Johnny Depp's *Black Mass*. The collection will be up until March 7 (just look under the Enjoy Better category).

COMCAST
Comcast Xfinity TV has stocked lots of nominees on demand, including *Trumbo*, *The Danish Girl*, *Bridge of Spies*, *Room*, *Steve Jobs*, *The Martian*, *Straight Outta Compton*, *Mad Max: Fury Road* and *Amy* (fees vary). And thanks to a new partnership with ABC and the Oscars, Comcast Xfinity TV also is offering a new Best of Oscars video collection from past Academy Awards broadcasts, from memorable speeches to tear-jerking moments.

GEORGE KRAYCHYK, A24

Brie Larson and Jacob Tremblay in the story of a mother and son who are cut off from the world for seven years, is among the nominees for best picture.

VERIZON, AMAZON, GOOGLE PLAY
Similar selections of Oscar-nominated fare abound on demand at Verizon, Amazon, DirecTV Cinema and Google Play, from *Inside Out* and *Shaun the Sheep* to *Steve Jobs* and *Bridge of Spies*. Amazon also has films like *Room* and *Creed* (both a $14.99 purchase), the latter of which earned Sylvester Stallone a nomination, and Google Play adds *Spotlight* (a $14.99 purchase) and *Trumbo* ($3.99 to rent) to the mix. DirecTV also has an Award-Winning Movies channel, with past nominated films like *Boyhood* and *Argo* available.

Contributing: Ellen Back

Corrections & Clarifications
USA TODAY is committed to accuracy. To reach us, contact Standards Editor Brent Jones at 800-872-7073 or e-mail accuracy@usatoday.com. Please indicate whether you're responding to content online or in the newspaper.

Avery Brundage was an official with the U.S. Olympic Committee in the era shown in the movie *Race*. He would later become president of the International Olympic Committee. A story Friday misidentified his title at the time.

Exhibit F

13 April 2016

Settlement Administrator
GMAC Mortgage Lender Placed Insurance
P.O. Box 30206
College Station, TX 77842-3206

Lee C. Canty
5540 Scofield Road
College Park, Georgia 30349-3462

RE: Exclusion from Residential Capital, LLC, Case No. 12-12020 (MG)

Dear Sir/Madam,

I, Lee C. Canty would like to be excluded from Residential Capital, LLC, Case No. 12-12020 (MG). You do not have my approval to include me in this settlement!

Sincerely,

Lee C. Canty

CERTIFIED MAIL®

Cantey
5540 Scofield Road
College Park, Ga 30349

7015 1730 0002 0203 0654

OLD NATIONAL BR ATLANTA GA 30340
APR 14 2016
USPS

U.S. POSTAGE PAID
ATLANTA, GA
30349
APR 14 16
AMOUNT
$6.47
R2304M116053-11

RECEIVED
APR 19 2016
BY:.....

RETURN RECEIPT REQUESTED

Settlement Administrator
GMAC Mortgage Lender Placed Insurance
P.O. Box 30206
College Station, TX 77842-3206

77842$3206 B099

77842

1000

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE RESIDENTIAL CAPITAL, LLC, *et al.*, Debtors.	Case No. 12-12020 (MG) Chapter 11 Jointly Administered

DECLARATION OF MARK A. STRAUSS ON BEHALF OF KIRBY MCINERNEY LLP IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, MARK A. STRAUSS, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a member of the law firm of Kirby McInerney LLP, Plaintiffs' Counsel in connection with Plaintiffs' Bankruptcy Proofs of Claim and the related lawsuit brought by Plaintiffs in the United States District Court for the Southern District of New York, *i.e.*, the *Rothstein* Action. I submit this declaration in support of my firm's application for an award of attorneys' fees in connection with services rendered in connection with the filing and prosecution of Plaintiffs' claims, as well as the reimbursement of expenses incurred by my firm in connection therewith.

2. My firm was involved in all aspects of prosecution and resolution of Plaintiffs' Bankruptcy Proofs of Claim and in the prosecution of the claims against GMACM and Ally in the *Rothstein* Action. The very substantial work performed by my firm is set forth more fully in the accompanying Declaration of Mark A. Strauss in Support of Final Approval of Proposed *Rothstein* Class Action Settlement (Claim Nos. 4074 and 3966), Plan of Allocation, Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards for Named Plaintiffs.

3. The schedules attached hereto as Exhibit 1 contain detailed summaries indicating the amount of time spent by each attorney and professional support staff of my firm who was involved in the investigation and prosecution of the Bankruptcy Proofs of Claim and the claims asserted against GMACM and Ally in the *Rothstein* Action. The summaries also indicate the lodestar calculation based on my firm's current billing rates. For attorneys who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such attorneys in his or her final year of employment by my firm. The summaries were prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request. For the *Rothstein* Action, the summary only includes a portion of the hours expended by my firm through September 9, 2013, *i.e.*, the date that the Settling Parties reached their agreement in principle to resolve Plaintiffs' Bankruptcy Proofs of Claim.

4. The total number of hours expended on Plaintiffs' claims by my firm in this matter through April 21, 2016 is 2,175.50. The total lodestar for my firm is $1,339,665.00, consisting of $1,225,362.50 for attorneys' time and $114,302.50 for professional support staff time.

5. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

6. As detailed in Exhibit 2, my firm has incurred a total of $225,654.64 in unreimbursed expenses in connection with this matter. These expenses are reflected on the

books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

7. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were principally involved in this litigation.

I declare under penalty of perjury, under the laws of the State of New York, that the foregoing is true and correct.

Executed: April 26, 2016
New York, New York

/s/ Mark A. Strauss
Mark A. Strauss

EXHIBIT 1

KIRBY MCINERNEY LLP

0852.02 GMAC (BANKRUPTCY PROCEEDING) LODESTAR
FROM INCEPTION THROUGH APRIL 21, 2016

0852.01 GMAC MTG (*ROTHSTEIN* ACTION) LODESTAR
FROM INCEPTION THROUGH SEPTEMBER 9, 2013
(GMAC MTG AND ALLY)

Attorney	**Hours**	**Rate**	**Total**
Mark Strauss	1097.75	$ 800	$ 878,200.00
Thomas Elrod	191.00	$ 550	105,050.00
John Brandon Walker	159.00	$ 675	107,325.00
Sarah Lopez	84.50	$ 550	46,475.00
Edward Varga	47.00	$ 600	28,200.00
Anna Linetskaya	44.50	$ 325	14,462.50
Beverly Tse Mirza	31.25	$ 600	18,750.00
Emily Finestone	18.25	$ 350	6,387.50
Meghan Summers	16.75	$ 500	8,375.00
Peter Linden	10.50	$ 900	9,450.00
Elizabeth Brehm	2.25	$ 550	1,237.50
Joanne Cicala	1.25	$ 800	1,000.00
Daniel Hume	0.50	$ 900	450.00
	1704.50		$ 1,225,362.50
Senior Analysts			
Matthew Meador	114.50	$ 300	$ 34,350.00
Elaine Mui	6.75	$ 400	2,700.00
Valeriy Rudoy	3.25	$ 295	958.75
Wilona Karnadi	5.00	$ 250	1,250.00
Law Clerks	30.25	$ 250	$ 7,562.50
Paralegals/Clerks			
Paralegals	285.75	$ 225	$ 64,293.75
Clerks	25.5	$ 125	3,187.50
	2,175.50		$ 1,339,665.00

EXHIBIT 2

KIRBY MCINERNEY LLP

0852.02 GMAC (BANKRUPTCY PROCEEDING) EXPENSES
FROM INCEPTION THROUGH FEBRUARY 29, 2016

0852.01 GMAC MTG (*ROTHSTEIN* ACTION) LODESTAR
FROM INCEPTION THROUGH SEPTEMBER 9, 2013
(GMAC MTG AND ALLY)

Description	**Amount**
Expert Fee	$ 157,285.04
Legal Research	36,756.61
Data Hosting/Development	20,573.00
Document Retrieval	3,128.72
Court Reporter	2,907.65
Process Server	1,727.80
Document Management	1,346.10
Notices	1,155.00
Travel Hotel and Meals	390.26
Filing Fees	330.00
Fedex	49.99
Telephone	4.47
TOTAL EXPENSES	**$ 225,654.64**

EXHIBIT 3

Kirby McInerney LLP is a specialist plaintiffs' litigation firm with expertise in securities, antitrust, consumer, commodities, structured finance, whistleblower, health care, and other fraud litigation.

KM brings experience, intelligence, creativity and dedication to bear in defending our clients' interests against losses, generally in cases of corporate malfeasance. We utilize cutting edge strategies that bring high – and have even brought unprecedented – recoveries for our clients: institutional and other types of investors. We have achieved and are pursuing landmark results in the fields of securities fraud, corporate governance, commodities fraud, consumer, antitrust, health care and ERISA litigation, representing our clients in class actions or, if appropriate, individual litigation.

KM has been a pioneer in class action law, and is one of the oldest firms in the field, with nearly 70 years of experience. Throughout the history of our firm, we have procured ground-breaking victories for our clients. From our victory in *Schneider v. Lazard Freres*, No. 38899, M-6679 (N.Y. App. Div. 1st Dept. 1990), which set the precedent that investment banks have direct duties to the shareholders of the companies they advise, to our procurement of the first-ever appellate reversal of a lower court's dismissal of a class action suit pursuant to the PSLRA in *In re GT Interactive Securities Litigation*, No. 98-cv-0095 (S.D.N.Y. 2000), to our recovery of an unprecedented 100 cents on the dollar for our clients in *In re Cendant Corp. PRIDES Litigation*, No. 98-cv-2819 (D. N.J. 2000), KM has helped to chart the nuances of the U.S. securities laws, and has procured superior results in the process. KM has recovered billions of dollars for our clients, and the average recoveries that we procure in each individual case are among the very best in the field.

In addition to our securities practice, KM has over nearly three decades of experience defending the interests of institutional clients, businesses and individual consumers in cases of commercial fraud in a variety of market sectors including insurance, telecommunications, real estate and others.

Some of our past notable experience advising clients in connection with consumer fraud matters includes *In re MCI Non-Subscriber Litigation*, MDL No. 1275 (S.D. Ill. 2001), a consumer class action which resulted in an approximately $90 million recovery for the class; and *Reynolds v. Beneficial National Bank*, 288 F.3d 277 (7th Cir. 2002) where our attorneys successfully persuaded the U.S. Court of Appeals for the Seventh Circuit and ultimately the district court to overturn the settlement in question, and were then appointed co-lead counsel to the class. KM attorneys were ultimately lauded by the presiding judge for their "intelligence and hard work," and for obtaining "an excellent result for the class."

KM prides itself on its proven ability to employ innovative techniques to obtain recoveries for defrauded consumers, consistently delivering financial relief for our clients. Our work continues to protect the interests of consumers against the risks of corporate fraud while prompting positive change in the way that companies do business by enforcing the laws designed to govern the consumer market.

CURRICULA VITAE

Roger W. Kirby is Of Counsel to the firm. He has written several articles on litigation, the Federal Rules of Civil Procedure and Federal Rules of Evidence that have been published by various reporters and journals, and has been on the board of editors of Class Action Reports. He has also lectured on aspects of securities litigation to various professional organizations in the United States and abroad. Mr. Kirby has enjoyed considerable success as a trial attorney, and cases for which he has had primary responsibility have produced landmark decisions in the fields of securities law, corporate governance, and deceptive advertising.

Some of Mr. Kirby's relevant work includes:

- Representation of a putative class of initial public offerors in *Cordes & Company Financial Services v A.G. Edwards & Sons, Inc*. On appeal to the Court of Appeals for the Second Circuit, the court reversed the decision below, and held that assignees may be class representatives. It also clarified the meaning of antitrust injury;

- Representation of an objector to the settlement in *Reynolds v. Beneficial National Bank* in the United States Northern District Court for the District of Illinois. Mr. Kirby and KM persuaded the Court of Appeals for the Seventh Circuit and ultimately the district court to overturn the settlement, and were then appointed co-lead counsel to the class. Mr. Kirby and KM were lauded by the presiding judge for their "intelligence and hard work," and for obtaining "an excellent result for the class.";

- Representation, as lead counsel, of a class of investors in *Gerber v. Computer Associates International, Inc.*, a securities class action that resulted in a multimillion dollar recovery jury verdict that was upheld on appeal; and

- Representation, as lead counsel, of purchasers of PRIDES securities in connection with the Cendant Corporation accounting fraud. Mr. Kirby was instrumental in securing an approximate $350 million settlement for the class – an unprecedented 100 percent recovery.

Mr. Kirby is admitted to the New York State Bar, the United States District Courts for the Southern and Eastern Districts of New York, the United States Courts of Appeals for the First, Second, Third, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits, the United States District Court, District of Connecticut, and the United States Supreme Court. He attended Stanford University & Columbia College (B.A.) and Columbia University School of Law (J.D.) where he was an International Fellow. He also attended The Hague Academy of International Law (Cert. D'Att.). Thereafter, he was law clerk to the late Honorable Hugh H. Bownes, United States District Court for New Hampshire, and the United States Court of Appeals for the First Circuit. He recently authored *Access to United States Courts By Purchasers Of Foreign Listed Securities In The Aftermath of Morrison v. National Australia Bank Ltd.*, 7 Hastings Bus. L.J. 223 (Summer 2011). Mr. Kirby is a visiting Law Fellow at the University of Oxford, St. Hilda's College, Oxford, U.K. Mr. Kirby is conversant in French and Italian.

Alice McInerney is Of Counsel to the firm and practices out of our New York office. She focuses on antitrust and consumer matters, and also handles securities class actions. Ms. McInerney joined the firm in 1995 and has over 30 years of experience as an attorney.

Prior to joining KM, Ms. McInerney was Chief of the Investor Protection Bureau and Deputy Chief of the Antitrust Bureau of the New York Attorney General's office. While there, she chaired the Enforcement Section of the North American Securities Administrators Association and also chaired the Multi-State Task Force on Investigations for the National Association of Attorneys General. Alice is also a member of the National Association of Public Pension Attorneys (NAPPA).

Some of Ms. McInerney's relevant work includes:

- Representation, as lead and co-lead counsel, of consumer classes in antitrust cases against Microsoft. These litigations resulted in settlements totaling nearly a billion dollars for consumers in Florida, New York, Tennessee, West Virginia and Minnesota;

- Representation of a class of retailers in *In re Visa Check/Master Money Antitrust Litigation*, an antitrust case which resulted in a settlement of over $3 billion for the class;

- Representation of public entities in connection with ongoing Medicaid fraud and false claims act litigations arising from health expenditures of these state and local governmental entities; and

- Representation of California homeowners in litigation arising from mortgage repayment irregularities. Litigation resulted in settlements that afforded millions of California homeowners clear title to their property. The cases resulted in the notable decision *Bartold v. Glendale Federal Bank*.

Ms. McInerney is admitted to the New York State Bar, all United States District Courts for the State of New York, the United States Court of Appeals for the Second Circuit and the United States Supreme Court. She graduated from Smith College (B.A. 1970) and Hofstra School of Law (J.D. 1976).

David Bishop is a partner practicing out of our New York office, where he coordinates domestic client and government relations. Mr. Bishop joined the firm in 2006 following a distinguished career in local government. Mr. Bishop was elected to the Suffolk County Legislature in 1993 while still attending Fordham Law School. There he served in several leadership capacities, including Democratic Party Leader, Chairman of Public Safety and Chairman of Environment. His legislative record earned him recognition from the Nature Conservancy, the Child Care Council and the Long Island Federation of Labor.

As an attorney in private practice, Mr. Bishop has litigated numerous NASD arbitrations on behalf of claimants.

Recent cases in which Mr. Bishop has been involved include:

- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation,* a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of $168 million;

- Representation, as lead counsel, of classes of consumers harmed by price fixing in the LCD flat panel and SRAM markets; and

- Representation, as co-lead counsel, of an investor class led by an individual investor in *Lapin v. Goldman Sachs*, a securities class action against Goldman Sachs. This litigation resulted in a recovery of $29 million for the class.

Mr. Bishop is admitted to the New York State Bar and the United States District Court for the Eastern and Southern Districts of New York. He is a member of the Public Investors Arbitration Bar Association and of the New York City Bar Association. He graduated from American University (B.A., 1987) and from Fordham University (J.D., 1993).

Randall M. Fox is a partner in our New York office, focusing on whistleblower, antitrust and consumer fraud matters. Mr. Fox joined the firm in 2014 after having served as the founding Bureau Chief of New York Attorney General's Taxpayer Protection Bureau. The Bureau handles claims that the government was defrauded, including claims brought by whistleblowers. Before being promoted to Bureau Chief, Mr. Fox was a Special Assistant Attorney General in the New York Attorney General's Medicaid Fraud Control Unit, where he handled cases involving healthcare fraud. He currently serves on the Law360 Government Contracts Editorial Advisory Board.

Recent cases handled or supervised by Mr. Fox at the Attorney General's Office include:

- Pursued $400 million False Claims Act claims raised by a whistleblower against Sprint Corporation for knowingly failing to pay New York State and local sales taxes on its monthly flat-rate charges for cell phone service. This case is ongoing;

- Represented New York in its first government initiated False Claims Act case, pursuing Medicaid claims against pharmaceutical giant Merck & Co. alleging that the government was defrauded in paying for Merck's pain drug Vioxx. The case settled on a nationwide basis for $980 million, with over $60 million going to New York;

- Pursued investigations into food services companies that had kept rebates rather than passing them along to schools and other public institutions as required by their contracts and regulations. Settled for nearly $20 million;

- Co-led team of states that participated in $11 million settlement of False Claims Act allegations that technology company CA, Inc. falsely overcharged governmental customers for service plans;

- Pursued False Claims Act allegations on behalf of a whistleblower against a medical imaging company for failing to pay New York corporate income taxes while conducting substantial business in the State. Settled for $6.2 million;

- Pursued claims on behalf of a whistleblower against Mohan's Custom Tailors for knowingly failing to pay sales taxes that were nevertheless collected from customers. The resolution included a plea to criminal charges and an agreement to jail time. This case settled for $5.5 million ; and

- Settled claims against an accounting firm for falsely certifying a substance abuse clinic's inflated claims for Medicaid payments.

Before joining the New York Attorney General's Office in 2007, Mr. Fox was a partner at the law firm of LeBoeuf, Lamb, Greene & MacRae, LLP, where his practice focused on class actions, commercial disputes, and securities and consumer fraud actions. Mr. Fox is admitted to the New York State bar, the United States District Courts for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second, Third, Eighth and Ninth Circuits, and the United States Tax Court. He graduated from Williams College (B.A., 1988), and New York University School of Law (J.D., 1991).

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Daniel Hume is a partner in our New York office and is a member of the firm's management committee. Mr. Hume's practice focuses on securities, structured finance, and antitrust litigation. He joined the firm in 1995 and has helped to recover billions of dollars for corporate consumers, individual consumers, and institutional investors throughout the course of his career.

Some of Mr. Hume's relevant work includes:

- Representation, as lead counsel, of a group of Singapore-based investors in a securities class action against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley routed Pinnacle investors' principal into synthetic collateralized debt obligations (CDOs) that it built to fail and then bet against. As the CDOs failed by design, plaintiffs' principal was swapped to Morgan Stanley, enriching Morgan Stanley while rendering the Pinnacle Notes an all-but-total loss. This case settled for $20 million;

- Representation, as lead counsel, of the investor class in *In re AT&T Wireless Tracking Stock Securities Litigation*, a securities class action which resulted in recovery of $150 million for the class; and

- Representation, as a lead counsel, of consumer classes in connection with antitrust proceedings against Microsoft in the United States and Canada. So far, these litigations have resulted in settlements totaling nearly a billion dollars for consumers in Florida, New York, Tennessee, West Virginia and Minnesota, where the litigation proceeded to trial.

Mr. Hume is admitted to the New York State Bar and federal courts around the country, including the United States District Courts for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second, Third, Fourth, Fifth, Eighth and Ninth Circuits, the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, and the United States Supreme Court. He graduated from the State University of New York at Albany *magna cum laude* (B.A. Philosophy, 1988) and from Columbia Law School, where he served as Notes Editor for the Columbia Journal of Environmental Law (J.D., 1991).

David E. Kovel is a partner based in our New York office and is a member of the firm's management committee. Mr. Kovel's practice focuses on whistleblower, antitrust, commodities, securities and corporate governance matters. Mr. Kovel joined the firm in 2004.

Recent cases in which Mr. Kovel has been involved include:

- *In re Libor-Based Financial Instruments Antitrust Litigation*. Court appointed co-liaison counsel for all class actions in the multi-district litigation and co-lead counsel for exchange-based class alleging the fixing of prices of a benchmark interest rate. Obtained a $20 million settlement with one of 16 defendants (the first settlement in the ongoing complex litigation). Remaining claims are pending;
- Representation, as counsel for lead plaintiff and other share holders in a derivative action brought against members of the Board of Directors and senior executives of Pfizer, Inc. for breach of fiduciary duty. Pfizer agreed to pay a proposed settlement of $75 million and to make groundbreaking changes to the Board's oversight of regulatory matters;
- Representation of purchasers of pharmaceutical drugs claiming to have been harmed by Branded manufacturers who fraudulently extended patent or other regulation monopolies;
- Representation, as a lead counsel, of a class of New York State consumers in connection with antitrust proceedings against Microsoft;
- Representation, as lead counsel, of a class of gasoline purchasers in California in connection with Unocal, Inc.'s manipulation of the standard-setting process for gasoline. The litigation resulted in a $48 million recovery for the class;
- Representation, as lead counsel in *In re North Sea Brent Crude Oil Futures Litig* on behalf of a proposed class of traders alleging benchmark manipulation. This litigation is ongoing;
- Representation of propane purchasers who were harmed by BP America's manipulation of the physical propane market; and
- Representation of various whistleblowers who claim that their companies have defrauded the United States Government or other state and city governments.

Mr. Kovel also has an active pro bono practice, having represented, among others, clients in need of housing referred through the office of *pro se* litigation in the Southern District of New York, clients in foreclosure matters, and a Latino soccer association in its efforts organize and obtain a fair proportion of field time from a municipality.

Mr. Kovel is admitted to the New York State Bar, the United States District Courts for the Southern, Eastern, and Western Districts of New York, the United States Court of Appeals for the First Circuit, and the Connecticut State Bar. He is a member of the New York City Bar Association Committee on Futures and Derivatives Regulation, and is a former member of the New York City Bar Association Antitrust Committee. He graduated from Yale University (B.A.), Columbia University School of Law (J.D.) and Columbia University Graduate School of Business (M.B.A.). He is fluent in Spanish.

Mr. Kovel traded commodities for several years before attending law school. Prior to joining KM, Mr. Kovel practiced at Simpson Thacher & Bartlett LLP.

Peter S. Linden is a partner in our New York office and is a member of the firm's management committee. Mr. Linden's practice concentrates on securities, commercial, and healthcare fraud litigation. He joined the firm in 1990 and provides advisory services to government pension funds and other institutional investors as well as to corporate and individual consumers. He has been appointed a Special Assistant Attorney General for the State of Michigan and is a member of the National Association of Public Pension Plan Attorneys.

Mr. Linden has obtained numerous outstanding recoveries for investors and consumers during his career. His advocacy has also resulted in many notable decisions, including in *In re Matsushita Securities Litigation*, granting partial summary judgment under § 14(d)(7) of the Securities Exchange Act, and *In re Ebay Inc. Shareholders Litigation*, finding that investment banking advisors could be held liable for aiding and abetting insiders' acceptance of IPO allocations through "spinning".

Some of Mr. Linden's relevant experience includes:

- Representation, as lead counsel, of the lead plaintiff in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million;

- Representation of the City of New York and 43 New York counties in federal Medicaid fraud actions. KM has settled or reached agreements in principle with all defendants in these matters. We have recovered over $225 million for the New York and Iowa Medicaid programs;

- Representation of the State of Michigan in a lawsuit filed in Michigan State Court against McKesson Corporation, Hearst Corporation, and First DataBank, a case arising out of the defendants' fraudulent scheme to increase the Average Wholesale Prices of hundreds of brand name drugs thereby causing false claims to be submitted to the Michigan Medicaid program. This case recently settled;

- Representation, as co-lead counsel, of an investor class and an institutional plaintiff in *In re BISYS Securities Litigation*, a class action arising out of alleged accounting improprieties and which resulted in a $65 million recovery for the class;

- Serving as Chairman of the Plaintiffs' Steering Committee in *In re MCI Non-Subscriber Litigation*, a consumer class action which resulted in an approximately $90 million recovery for the class; and

- In *Reynolds v. Beneficial National Bank*, Mr. Linden and KM successfully persuaded the 7th Circuit U.S. Court of Appeals and ultimately the district court to overturn a questionable settlement, and were then appointed co-lead counsel to the class. Mr. Linden and KM were lauded by the district judge for their "intelligence and hard work," and for obtaining "an excellent result for the class."

Mr. Linden is admitted to the New York State Bar, the U.S. Courts of Appeals for the Second, Third, Sixth, Seventh, Eighth, and Tenth Circuits, and the U.S. District Courts for the Eastern and Southern Districts of New York, the Eastern District of Michigan, and the District of Colorado. He graduated from the State University of New York at Stony Brook (B.A., 1980) and the Boston University School of Law (J.D., 1984).

Prior to joining KM, Mr. Linden worked as an assistant district attorney in the Kings County District Attorney's Office from 1984 through October, 1990 where he served as a supervising attorney of the Office's Economic Crimes Bureau.

Andrew M. McNeela is a partner in our New York office focusing on securities and structured finance litigation. Mr. McNeela joined the firm in 2008.

Some of Mr. McNeela's relevant work includes:

- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of $75 million;

- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation,* a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of $168 million;

- Representation, as lead counsel, a group of Singapore-based investors in a securities class action against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley routed Pinnacle investors' principal into synthetic collateralized debt obligations (CDOs) that it built to fail and then bet against. As the CDOs failed by design, plaintiffs' principal was swapped to Morgan Stanley, enriching Morgan Stanley while rendering the Pinnacle Notes an all-but-total loss. The court denied defendants motions to dismiss and later granted plaintiffs' motion for class certification. On November 7, 2014, the parties executed a settlement agreement, pursuant to which Defendants have agreed to pay $20 million to resolve the action, which was preliminarily approved by the court on December 2, 2014;

- Representation, as lead counsel, in the securities class action *In Re Herley Industries Inc. Securities Litigation* on behalf of investors. This litigation resulted in a recovery of $10 million for the class; and

- Representation, as lead counsel, of investors in Goldman Sachs common stock in a securities class action case pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. Disclosure caused Goldman Sachs' stock to decline materially. This litigation resulted in a recovery of $29 million for the class.

Immediately prior to joining KM, Mr. McNeela served as an Assistant United States Attorney in the Civil Division of the United States Attorney's Office for the Southern District of New York. In this capacity, he represented the United States in a wide array of civil litigation. Mr. McNeela has argued over twenty cases before the United States Court of Appeals for the Second Circuit. In 2013, he was named one of the top attorneys under 40 by Law360's Rising Stars.

Mr. McNeela is admitted to the New York State Bar, the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York. He is a member of the New York American Inn of Court. He graduated from Washington University (B.A., 1995) and from Hofstra University School of Law (J.D., 1998, *cum laude*), where he was a member of the Law Review.

Ira M. Press is a partner in our New York office and is a member of the firm's management committee. Mr. Press's practice focuses on securities and consumer litigation. He joined the firm in 1993, and currently leads the firm's institutional investor monitoring program. In this capacity, he has provided advisory services to numerous government pension funds and other institutional investors. He has authored articles on securities law topics and has lectured to audiences of attorneys, experts and institutional investor fiduciaries.

Mr. Press' advocacy has resulted in several landmark appellate decisions, including *Rothman v. Gregor*, the first ever appellate reversal of a lower court's dismissal of a securities class action suit pursuant to the 1995 Private Securities Litigation Reform Act.

Some of Mr. Press' relevant experience includes:

- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation,* a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of $168 million;

- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of $75 million;

- Representation of the lead plaintiff in *In re Citigroup Inc Securities Litigation,* a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million; and

- Representation, as lead counsel, of investors in Goldman Sachs common stock in a securities class action case pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. Disclosure caused Goldman Sachs' stock to decline materially. This case resulted in a $29 million recovery for the class.

Mr. Press is admitted to the New York State Bar, the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, and Tenth Circuits, and the United States District Courts for the Eastern and Southern Districts of New York. He graduated from Yeshiva University *magna cum laude* (B.A., 1986) and from New York University Law School (J.D., 1989).

Mark Strauss is a partner in our New York office. He concentrates his practice in complex commercial litigation with an emphasis on prosecuting securities, shareholder and consumer class actions, shareholder derivative actions, and whistleblower cases. He has also represented victims of Ponzi schemes, illegal price-fixing, and improper cutbacks in pension benefits. Mr. Strauss has litigated cases throughout the country, and represented aggrieved plaintiffs in Federal and State Court.

Some of Mr. Strauss' relevant work includes significant roles in the following litigations:

- Representation of a whistleblower in a False Claims Act/*Qui Tam* lawsuit against Hong-Kong based manufacturer Noble Jewelry, which was accused of fraudulently avoiding U.S. customs duties in connection with goods imported into the United States. The action resulted in a recovery of $3.85 million on behalf of the taxpayers, of which the whistleblower will receive approximately 19%;

- Representation, as co-lead counsel, of a multinational bank as lead plaintiff in *In re Adelphia Communications Corp. Securities & Deriv. Litig.*, a securities class action which resulted in a total recovery of $478 million for the class;

- Representation, as co-lead counsel, of a class of hedge fund investors in *Cromer Finance v. Berger et al.*, a securities class action which resulted in a total recovery of $65 million, and one of the largest ever recoveries against a non-auditor third party service provider;

- Representation, as lead counsel, of a class of investors in a hedge fund, Lipper Convertibles, L.P., which fraudulently overstated its investment performance, in *In re Serino v. Lipper et al.* This litigation is resulted in a $29.9 million recovery for the class;

- Representation, as lead counsel, of a class of bond investors in Amazon.com in *Argent Classic Convertible Arbitrage Fund v. Amazon.com*, a securities class action which resulted in a total recovery of $20 million for the class; and

- Representation of a putative class of mortgagors charged for lender-placed insurance by the debtor GMAC Mortgage LLC in *In re Residential Capital, LLC, et al.*, No. 12-12020 (Bankr. S.D.N.Y.). On January 11, 2016 Bankruptcy Judge Martin Glenn preliminarily approved a proposed class action settlement recovering an allowed unsecured claim not subject to subordination in the amount of $13 million.

Mr. Strauss is admitted to the New York State Bar, the California State Bar, and the United States District Courts for the Eastern and Southern Districts of New York, and the Northern, Eastern, Southern and Central Districts of California. He graduated from Cornell University (B.A., 1987) and from Fordham University School of Law, where he was Associate Editor of the Law Review (J.D., 1993).

Prior to joining Kirby McInerney, Mr. Strauss practiced at Christy & Viener, LLP and Cahill Gordon & Reindel LLP where he focused on complex commercial litigation.

Christopher S. Studebaker is a partner in our New York office focusing on antitrust, structured finance, and securities litigation. Mr. Studebaker joined the firm in 2007.

Recent cases on which Mr. Studebaker has worked include:

- Representation of the State of Michigan in a lawsuit filed in Michigan State Court against McKesson Corporation, Hearst Corporation, and First DataBank. The case alleges that each defendant caused false claims to be submitted to the Michigan Medicaid program, and the overpayment of Medicaid pharmacy claims;

- Representation, as lead counsel, of a group of Singapore-based investors in a securities class action against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley routed Pinnacle investors' principal into synthetic collateralized debt obligations (CDOs) that it built to fail and then bet against. As the CDOs failed by design, plaintiffs' principal was swapped to Morgan Stanley, enriching Morgan Stanley while rendering the Pinnacle Notes an all-but-total loss. This case settled for $20 million;

- Representation, as lead counsel, in *In Re Herley Industries Inc. Securities Litigation* on behalf of investors. This litigation resulted in a recovery of $10 million;

- Representation of direct purchasers against Becton Dickinson for alleged monopolization of the hypodermic syringe market. This litigation is ongoing;

- Representation of California consumers against Intel for alleged monopolization of the X86 microprocessor chip market. This litigation is ongoing; and

- Representation of consumers against TFT-LCD manufacturers for alleged price-fixing of the TFT-LCD market. This litigation is ongoing.

Before joining the firm, Mr. Studebaker worked as an associate with an antitrust and consumer protection boutique, and served at the U.S. Department of Commerce. Prior to attending law school, Mr. Studebaker worked and studied in Japan.

Mr. Studebaker is admitted to the New York State Bar, the Washington State Bar, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Second Circuit. He is a member of the Asian American Bar Association of New York. Mr. Studebaker graduated from Georgetown University (B.S.F.S., 1997, *cum laude*), Waseda University (M.A., 2001), and University of Kansas (J.D., 2004), where he was Managing Editor of the Journal of Law & Public Policy. He is fluent in Japanese.

Robert J. Gralewski, Jr. is a partner based in our California office. Mr. Gralewski focuses on antitrust and consumer litigation and has been involved in the fields of complex litigation and class actions for over 15 years. Throughout the course of his career, Mr. Gralewski has prosecuted a wide variety of federal and state court price-fixing, monopoly and unfair business practice actions against multinational companies, major corporations, large banks, and credit card companies.

Some of Mr. Gralewski's relevant work includes:

- Representation of businesses and consumers in indirect purchaser class actions throughout the country against Microsoft for overcharging for its products as a result of its unlawful monopoly. Mr. Gralewski was a member of the trial teams in the Minnesota and Iowa actions (the only two Microsoft class actions to go to trial) which both settled in plaintiffs' favor after months of hard-fought jury trials. The Microsoft cases in which Mr. Gralewski was involved in ultimately settled for more than $2 billion in the aggregate;

- Representation of businesses and consumers of thin-film transistor liquid crystal display (TFT-LCD) products who were harmed by an alleged price-fixing conspiracy among TFT-LCD manufacturers; and

- Representation of businesses and consumers in an indirect purchaser class action against various manufacturers of SRAM, alleging that defendants engaged in a conspiracy to fix prices in the SRAM market.

Mr. Gralewski is a member of the California State Bar and is admitted to practice in state and all federal courts in California as well as several federal courts throughout the country. He graduated from Princeton University (B.A., 1991) and *cum laude* from California Western School of Law (J.D., 1997).

Randall K. Berger is Of Counsel to the firm and practices out of our New York office. He joined the firm in 1994. Mr. Berger focuses on commercial arbitration, antitrust, whistleblower and unclaimed property litigation. In whistleblower cases, fraud against Federal and State governments is exposed by persons having unique knowledge of the circumstances surrounding the fraud. The whistleblowers are often compensated from any recovery and the cases are generally litigated under seal.

Mr. Berger is a certified arbitrator for FINRA (the Financial Industry Regulatory Authority). The arbitration panels where Mr. Berger serves are used to resolve disputes between investors and broker dealers or registered representatives, and to resolve intra-industry conflicts.

Some of Mr. Berger's relevant work includes:

- Representation of municipal issuers of Auction Rate Securities in FINRA arbitrations against underwriters alleging misrepresentation and breach of fiduciary duty;
- Representation of State Treasurers in litigation against the Federal government to recover unclaimed U.S. savings bond proceeds;
- Antitrust litigation against the 27 largest investment banks in the United States in connection with alleged price fixing in the market for the underwriting of initial public stock offerings; and
- Representation, as co-lead counsel, of investors in Ponzi scheme instruments issued by the now-bankrupt Bennett Funding Group in a class action which resulted in a recovery of $169.5 million for the class.

Mr. Berger is admitted to the New York State Bar, the United States District Courts for the Southern, Eastern and Northern Districts of New York and the District of Colorado. He graduated from Iowa State University (B.S., 1985) and from the University of Chicago (J.D., 1992).

Prior to attending law school and joining KM, Mr. Berger was an associate with the law firm Winston & Strawn, and before that, a consultant with the Management Information Consulting Division of Arthur Andersen & Co.

Will Harris is Of Counsel to the firm. He focuses on antitrust and consumer litigation.

Some of Mr. Harris's relevant work includes:

- Representation of direct purchasers in a class action against the manufacturers of drywall in *In re Domestic Drywall Antitrust Litigation*. The defendants allegedly unlawfully conspired to artificially inflate the prices of drywall in the U.S.;
- Representation of businesses and consumers of thin-film transistor liquid crystal display (TFT-LCD) products who were harmed by an alleged price-fixing conspiracy among TFT-LCD manufacturers; and
- Representation of businesses and consumers in an indirect purchaser class action against various manufacturers of SRAM, alleging that defendants engaged in a conspiracy to fix prices in the SRAM market.

Mr. Harris is admitted to the New York State Bar and the United States District Court for the Southern District of New York. He graduated from The College of William & Mary (B.A. 2001) and Washington and Lee University School of Law (J.D. 2005).

Prior to joining KM, Mr. Harris was an associate with the law firm Gergosian & Gralewski, and before that, he worked as a contract attorney with KM in connection with the firm's Microsoft litigation, which ultimately settled for more than $2 billion in the aggregate.

Karen M. Lerner is Of Counsel to the firm and practices out of the New York office. She focuses on antitrust, commodities and healthcare fraud. Ms. Lerner joined the firm in 2015, and has been a practicing attorney since 1991, handling numerous state and federal actions, including disciplinary, trial and appellate matters.

Some of Ms. Lerner's relevant work includes:

- Representation as fiduciary for the interim exchange class counsel in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in a partial settlement of more than $2 billion;

- Representation, as co-lead counsel, of exchange-based investors in futures, swaps, and other Libor-based derivative products, alleging that defendant banks colluded to misreport and manipulate Libor rates; and

- Representation as a counsel in the benchmark rate antitrust litigation on behalf of a putative class of investors who traded futures and options contracts on the NYSE LIFFE exchange against global financial institutions responsible for the setting the Euro Interbank Offered Rate ("Euribor"). The case has already resulted in a partial settlement of more than $90 million.

Ms. Lerner is admitted to the New York State Bar, New Jersey State Bar, United States Supreme Court, U.S. District Court for the Eastern District of New York, U.S. District Court for the District of New Jersey, U.S. Court of Appeals for the 3rd Circuit, and the United States District Court for the Southern District of New York. Ms. Lerner graduated from the University of Albany – SUNY (B.A. 1988, *summa cum laude*), and the University of Pennsylvania School of Law (J.D. 1991).

Prior to joining KM, Ms. Lerner was Of Counsel at McDonough, Lorn, Eichhorn & Boyle, where she worked cases involving professional liability defense, negligence, insurance coverage, and products liability.

John Low-Beer is Of Counsel to the firm and focuses on whistleblower litigation. Mr. Low-Beer formerly was Assistant Corporation Counsel, Affirmative Litigation with the NYC Law Department (1987-2000, 2003-2013), and was the lead attorney on complex and highly publicized matters, including:

- Suit against BNY Mellon concerning FX trading for City pension funds;
- Litigation concerning City taxation of consular and U.N. mission staff housing;
- Successful challenge to New York State's misallocation of $750 million in federal stimulus funding;
- Suit forcing Governor to implement State takeover of $2.5 billion in City debt; and
- Suits against more than 40 pharmaceutical companies recovering $240 million (with Kirby McInerney).

In addition, Mr. Low-Beer has a robust pro bono and low bono practice, representing plaintiffs in immigration, urban land use, guardianship, and whistleblower cases. Recent wins include *Avella v. City of New York*, 131 A.D.3d 77 (1st Dept. 2015), which invalidated a plan to build a shopping mall on parkland in Queens, and *Matter of Daniel B.*, 22 N.Y.S.3d 553 (2d Dept. 2015), which upheld a judgment in a guardianship/turnover proceeding.

Prior to joining the NYC Law Department, Mr. Low-Beer was law clerk to Hon. Leonard Garth, U.S. Court of Appeals for the Third Circuit, and Associate Professor at York College, CUNY, and Assistant Professor at Yale School of Management and Department of Sociology. He is the author of a book, *Protest and Participation* (Cambridge U.P. 1978) and a prize-winning note in the Yale L.J., "The Constitutional Imperative of Proportional Representation," among other publications.

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Sawa Nagano is Of Counsel to the firm. She focuses on the representation of clients in relation to price-fixing litigation under the Sherman Antitrust Act and other federal and state laws to recover overcharges caused by international price-fixing cartels. Ms. Nagano joined the firm in 2013.

Recent cases on which Ms. Nagano has worked include:

- Representation of an end-user class of businesses and consumers in connection with *In Re: Cathode Ray Tube (CRT) Antitrust Litigation.* In this case, the manufacturers of cathode ray tubes conspired to fix, raise, maintain and/or stabilize prices. Because of Defendants' alleged unlawful conduct, Plaintiffs and other Class Members paid artificially inflated prices for CRT Products and have suffered financial harm.

Prior to joining KM, Ms. Nagano worked with the law firms of both Orrick, Herrington, and Sutcliffe LLP and Crowell and Morning LLP, where she assisted in the investigation of conspiracies to engage in price-fixing and anticompetitive practices by manufacturers and multinational conglomerates, and she represented cable operators on matters arising before the Federal Communications Commission as well as in their relations with local and state franchising authorities. She also worked for the New York bureau of a major Japanese television network. Additionally, she interned with the Office of Commissioner Furchtgott-Roth at the Federal Communications Commission and worked as a student counsel at the Art, Sports and Entertainment Law Clinic of the Dickinson School of Law of the Pennsylvania State University.

Ms. Nagano is admitted to the New York State Bar, the New Jersey State Bar, the Bar of the District of Columbia, and the United States District Courts for the Southern District of New York and the District of New Jersey. She graduated from Sophia University in Tokyo, Japan (B.A., 1989), New York University (M.A., 1992), and The Dickinson School of Law of the Pennsylvania State University (J.D., 2000). She is fluent in Japanese.

Lauren Wagner Pederson is Of Counsel to the firm and works on commodities, antitrust and securities litigation matters. Ms. Pederson has over 20 years of legal experience and has represented individuals and institutional investors in many high profile securities and commodities class actions, and has served as counsel to public pension funds, shareholders, traders, hedge funds and companies in a broad range of complex litigation matters. In addition, Ms. Pederson has litigated accounting and legal malpractice actions and tried cases in federal and state courts, including a bench trial in Delaware federal court on behalf of Trust Company of the West in a legal malpractice action arising out of an international private equity transaction. She also has successfully argued and defended appeals before the Court of Appeals for the Eleventh Circuit and has represented individuals and companies in securities arbitrations before FINRA and the New York Stock Exchange. Ms. Pederson has extensive experience in discovery in complex litigation, including managing electronic discovery, overseeing large multi-firm document reviews and conducting international depositions and document production. She also took a number of key depositions in the firm's securities litigation action against Citigroup, Inc., which settled for $590 million.

Currently, Ms. Pederson is involved in the following pending class action cases for the firm:

- Representation, as co-lead counsel, in *In re LIBOR-Based Financial Instruments Antitrust Litig*. of exchange-based investors in Eurodollar futures contracts that were harmed by the LIBOR Panel Banks' alleged collusion to misreport and manipulate Libor Rates;

- Representation, as lead counsel, in *In re North Sea Brent Crude Oil Futures Litig.* on behalf of a proposed class of traders alleging global crude oil benchmark manipulation; and

- Representation as Plaintiffs' counsel in *Taylor, et al., v. Bank of America Corp., et al.*, of claims on behalf of futures traders that were harmed by alleged manipulation of foreign exchange rates.

Ms. Pederson is a member of the New York City Bar Association Futures and Derivative Committee. She also has been certified as a mediator and is a member of the State Bars of New York, Delaware, Georgia, Alabama and the Commonwealth of Pennsylvania. She is admitted to practice in numerous federal courts, including the Second, Tenth and Eleventh Circuit Courts of Appeals and the Southern District of New York. Ms. Pederson has been an Adjunct Professor of Law at the Widener University School of Law in Wilmington, Delaware, teaching a securities litigation seminar. Ms. Pederson received her B.S. degree in Business Administration from Auburn University, and earned her J.D., *summa cum laude*, from the Cumberland School of Law where she was Associate Editor of the Cumberland Law Review, and recently earned her LL.M degree in Securities and Financial Regulation from Georgetown University Law Center. Ms. Pederson also served as Law Clerk to the Honorable Joel F. Dubina for the United States Court of Appeals for the Eleventh Circuit.

Henry Telias is Of Counsel to the firm and practices out of our New York office, focusing on accountants' liability and securities litigation. Mr. Telias joined the firm in 1997.

In addition to his legal work, Mr. Telias is the firm's chief forensic accountant. He holds the CFF credential (Certified in Financial Forensics) and the PFS credential (Personal Financial Specialist) from the American Institute of Certified Public Accountants. Mr. Telias received his CPA license from New York State in 1982. Prior to practicing as an attorney, he practiced exclusively as a certified public accountant from 1982 to 1989, including 3 years in the audit and tax departments of Deloitte Haskins & Sells' New York office.

Some of Mr. Telias' relevant experience includes:

- Representation of the lead plaintiff in *In re Citigroup Inc Securities Litigation,* a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million;

- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation,* a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of $168 million;

- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of $75 million; and

- Representation, as lead counsel, of a certified class of purchasers of PRIDES securities in connection with the Cendant Corporation accounting fraud in *In re Cendant Corporation PRIDES Litigation.* This litigation resulted in an approximate $350 million settlement for the certified class – an unprecedented 100 percent recovery.

Mr. Telias is admitted to the New York State Bar and the United States District Court for the Southern District of New York. He graduated from Brooklyn College *cum laude* (B.S., 1980) and from Hofstra University School of Law (J.D., 1989).

Elizabeth A. Brehm is an associate based in our New York office who concentrates on antitrust and securities litigation. Ms. Brehm joined the firm in 2011. Prior to her time at KM, Ms. Brehm practiced as an attorney in the New York office of Winston & Strawn LLP.

Recent cases on which Ms. Brehm has worked include:

- Representation of indirect purchasers in *In re Cathode Ray Tube (CRT) Antitrust Litigation*, a price fixing anti-trust case wherein it is alleged that defendant entities conspired to control prices of television and monitor components;

- Representation, as a lead counsel, of consumer classes in connection with antitrust proceedings against Microsoft in the United States and Canada. So far, these litigations have resulted in settlements totaling nearly a billion dollars for consumers in Florida, New York, Tennessee, West Virginia and Minnesota, where the litigation proceeded to trial;

- *In re Ductile Iron Pipe Fittings Antitrust Litigation*, MDL No. 2347 (D. NJ. 2012). Co-lead counsel on behalf of a proposed class of purchasers of iron pipe fittings for water projects. Class representatives include Wayne County, Michigan; and

- Representation, in an individual lawsuit against Morgan Stanley pertaining to four fraudulent collateralized debt obligations. Plaintiff alleges that Morgan Stanley represented that independent collateral managers would select safe, high-quality reference entities to be included in the collateralized debt obligations' underlying portfolios, but that in reality, Morgan Stanley controlled portfolio selection and chose high-risk collateral, while actively shorting that same collateral in order to enrich itself at its client's expense.

During her time at Winston & Strawn, Ms. Brehm focused on products liability litigation, including *Estate of Bobby Hill v. U.S. Smokeless Tobacco Co.*, a wrongful death products liability lawsuit brought by the family of Bobby Hill against Altria Group, which had recently acquired U.S. Smokeless Tobacco Co. The lawsuit asserted that U.S. Smokeless Tobacco manufactured and sold smokeless tobacco that Bobby Hill began using when he was 13-years-old and that this led to the death of Mr. Hill at age 42 from tongue cancer. The case settled prior to trial.

Ms. Brehm is admitted to the New York State Bar. She graduated from Boston University (B.A., 2001), Long Island University (M.S. Edu., 2004), and from Hofstra School of Law *magna cum laude* (J.D., 2008).

Thomas W. Elrod is an associate based in our New York office focusing on securities, commodities, antitrust and whistleblower litigation. Mr. Elrod joined the firm in 2011.

Recent cases on which Mr. Elrod has worked include:

- *In re Citigroup Inc Securities Litigation,* a class action, in which Kirby McInerney served as lead counsel, arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million;

- Representation of exchange-based investors in futures, swaps, and other Libor-based derivative products, alleging that defendant banks colluded to misreport and manipulate Libor Rates;

- Representation, as lead counsel, in *In re Hi-Crush Partners L.P. Sec. Litig.*, alleging that fracking sand producer Hi-Crush Partners misled shareholders prior to its initial public offering. This case resulted in a $3.8 million settlement while class certification was pending;

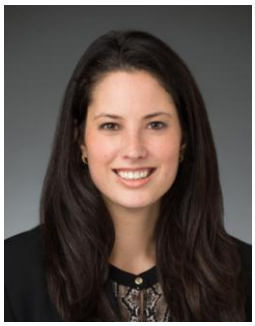
- Representation of municipal issuers of Auction Rate Securities in FINRA arbitrations alleging misrepresentations by underwriters;

- Representation of a nationwide class of residential mortgage loan borrowers in Rothstein v. GMAC Mortgage LLC et al., a class action alleging that GMAC Mortgage extracted kickbacks from lender-placed insurers, Balboa Insurance Company and Meritplan Insurance Company, in violation of Racketeer Influence and Corrupt Organizations Act. This litigation is ongoing;

- Representation, as lead counsel on behalf of a proposed class of futures traders in *In re North Sea Brent Crude Oil Futures Litig.*, alleging benchmark manipulation. This litigation is ongoing; and

- Representation of whistleblowers who claim that their companies have violated federal law or defrauded the United States Government.

Mr. Elrod is admitted to the New York State Bar, the New Jersey State Bar, the United States District Courts for the Southern and Eastern Districts of New York, the United States District Court for the District of New Jersey, and the United States Courts of Appeals for the 2nd and 9th Circuits. He graduated from the University of Chicago (B.A., 2005) and from the Boston University School of Law (J.D., 2009).



Emily C. Finestone is an associate based in our New York office who concentrates on securities, whistleblower and arbitration matters. Ms. Finestone joined the firm in 2015.

Recent cases on which Ms. Finestone has worked include:

- Representation of municipal issuers of Auction Rate Securities in FINRA arbitrations alleging misrepresentations by underwriters.
- Representation of trustee of bankruptcy estate in adversary proceedings on behalf of the estate, in *In re: Pitt Penn Holding Co., Inc. et al.*
- Representation of a municipal pension fund in an action brought in federal court against an investment adviser alleging breach of fiduciary duty resulting from excessive fees charged in violation of Section 36(b) of the Investment Company Act of 1940.

In addition, Ms. Finestone assists senior attorneys with drafting briefs and motions, legal memoranda and research on numerous cases, including *In re Molycorp, Inc. Securities Litigation*, *In re Treasury Securities Auction Antitrust Litigation*, and whistleblower proceedings

Ms. Finestone is admitted to the New York and Massachusetts State Bars. She graduated from University of Virginia (B.A. 2012) and Boston University School of Law (J.D. 2015). Publications include *SAC's Insider Trading*, 33 Rev. Banking & Fin.L. 11(2013); *Eliminating the Tax on Embezzled Funds: A Call for Reform* 34 Rev. Banking & Fin. L. 713 (2015).

Melissa Fortunato is an associate based in our New York office focusing on securities, antitrust, and merger and acquisition litigation. Ms. Fortunato joined the firm in 2013.

Recent cases on which Ms. Fortunato has worked include:

- Representation of a class of Zale Corporation investors challenging the proposed acquisition of Zale by Signet Jewelers;
- Representation of several European investment managers in individual securities fraud actions against BP plc related to the *Deepwater Horizon* explosion on April 20, 2010 and the subsequent drop in BP's share price;
- Representation of a class of NTS, Inc. investors challenging the proposed acquisition of NTS by affiliates of the private equity firm Tower Three Partners LLC; and
- Representation of a class of Cornerstone Therapeutics, Inc. investors challenging the proposed acquisition of Cornerstone by Chiesi Farmaceutici S.p.A.

Ms. Fortunato is a member of the New York, New Jersey and Connecticut state bars, the United States District Court for the District of New Jersey, and the United States District Courts for the Eastern and Southern Districts of New York. She graduated from Georgetown University (B.S. 2004) and Pace University School of Law, *magna cum laude* (J.D., 2013). Prior to attending law school, Ms. Fortunato worked in the marketing and media business sectors.

Karina Kosharskyy is an associate based in our New York office focusing on antitrust and securities litigation. Ms. Kosharskyy joined the firm in 2005.

Recent cases on which Ms. Kosharskyy has worked include:

- Representation of an end-user class of businesses and consumers in connection with *In Re: Cathode Ray Tube (CRT) Antitrust Litigation.* In this case, the manufacturers of cathode ray tubes conspired to fix, raise, maintain and/or stabilize prices. Because of Defendants' alleged unlawful conduct, Plaintiffs and other Class Members paid artificially inflated prices for CRT Products and have suffered financial harm;

- Representation of exchange-based investors in futures, swaps, and other Libor-based derivative products, alleging that defendant banks colluded to misreport and manipulate Libor rates;

- Representation of a class of consumers in connection with *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions.* This case involves Unocal's manipulation of the standard-setting process for low-emissions reformulated gasoline in California, which increased retail prices of reformulated gasoline. The court recently approved a preliminary settlement of $48 million in this litigation; and

- Representation of consumer classes in connection with antitrust proceedings against Microsoft. These litigations resulted in settlements totaling nearly a billion dollars for consumers in Florida, New York, Tennessee, West Virginia and Minnesota, where the litigation proceeded to trial.

Ms. Kosharskyy is admitted to the New York State Bar, the United States District Courts for the Southern and Eastern Districts of New York, the United States District Court for the District of New Jersey, and the New Jersey State Bar. She graduated from Boston University (B.A., 2000) and from New York Law School (J.D., 2007). She is fluent in Russian.

Ayako Mikuriya is a staff attorney based in our New York office, focusing on securities and structured finance litigation. Ms. Mikuriya joined the firm in 2013.

Recent cases on which Ms. Mikuriya has worked include:

- Securities and structured product litigations on behalf of clients across Asia.

Prior to joining KM, Ms. Mikuriya worked as a Vice President in the legal department of Nomura Holding America Inc. She has passed the qualification examination for Sales Representatives licensed by the Japan Securities Dealers Associations.

Ms. Mikuriya is admitted to the New York State Bar. She graduated from the Sophia University in Tokyo, Japan (B.A., 2003), and from Columbia University School of Law (LL.M., 2010). She is fluent in English and is a native speaker of Japanese.

Beverly Tse Mirza is an associate based in our New York office focusing on antitrust and securities litigation. Ms. Mirza joined the firm in 2004.

Recent cases on which Ms. Mirza has worked include:

- Representation of a class of consumers in connection with *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions.* This case involves Unocal's manipulation of the standard-setting process for low-emissions reformulated gasoline in California, which increased retail prices of reformulated gasoline. This litigation resulted in a $48 million recovery for the class;

- Representation of exchange-based investors in futures, swaps, and other Libor-based derivative products, alleging that defendant banks colluded to misreport and manipulate Libor rates;

- Representation, as one of the firms with primary responsibility for the case, of a class of purchasers of computers containing Intel's microprocessor chips in *Coordination Proceedings Special Title, Intel x86 Microprocessor Cases*. This litigation is ongoing;

- Representation of a class of retailers in *In re Chocolate Confectionary Antitrust Litigation,* alleging price fixing claims against a group of chocolate manufacturers in the United States and abroad;

- Representation of a union pension fund as lead plaintiff in *In re Moody's Corporation Securities Litigation*, a securities class action arising from Moody's misrepresentation about and in the course of its rating of mortgage-related securities. Classwide losses are estimated to be in the billions;

- Representation of a class of sellers in *In re Ebay Seller Antitrust Litigation*, alleging monopolization claims against Ebay;

- Representation of an objector to the settlement in *Reynolds v. Beneficial National Bank* in the United States Northern District Court for the District of Illinois. Ms. Mirza and KM were lauded by the presiding judge for their "intelligence and hard work," and for obtaining "an excellent result for the class."

Ms. Mirza is admitted to the California State Bar and the United States District Courts for the Northern and Central Districts of California. Her practice is supervised by members of the State Bar of New York. She graduated from California State University of Los Angeles *magna cum laude* (B.S., 2000) and from California Western School of Law (J.D., 2004).

Meghan Summers is an associate based in our New York office focusing on securities and structured finance antitrust litigation. Ms. Summers previously worked at the firm as a paralegal and law clerk before joining the firm in September 2012 as an associate.

Ms. Summers has recently worked on the following cases:

- Representation of a group of Singapore-based investors in a securities class action against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley routed Pinnacle investors' principal into synthetic collateralized debt obligations (CDOs) that it built to fail and then bet against. As the CDOs failed by design, plaintiffs' principal was swapped to Morgan Stanley, enriching Morgan Stanley while rendering the Pinnacle Notes an all-but-total loss. This case settled for $20 million;

- An individual lawsuit against Morgan Stanley pertaining to four fraudulent collateralized debt obligations. Plaintiff alleges that Morgan Stanley represented that independent collateral managers would select safe, high-quality reference entities to be included in the collateralized debt obligations' underlying portfolios, but that in reality, Morgan Stanley controlled portfolio selection and chose high-risk collateral, while actively shorting that same collateral in order to enrich itself at its client's expense;

- Individual lawsuits against Morgan Stanley, Credit Agricole Corporate and Investment Bank, UBS, Deutsche Bank, Credit Suisse, Goldman Sachs, JP Morgan, and Barclays pertaining to a number of fraudulent structured investment vehicles and asset-backed collateralized debt obligations;

- An individual securities fraud action against BP plc related to the Deepwater Horizon explosion on April 20, 2010, and the subsequent drop in BP's share price; and

- Individual securities fraud actions against Merck and Schering-Plough related to the commercial viability of the companies' anti-cholesterol medication Vytorin, and the subsequent drop in Merck's and Schering-Plough's share price.

As a law clerk, Ms. Summers worked on a variety of matters including *In re Citigroup Inc. Securities Litigation, In re Wachovia Corporation, In re Libor-Based Financial Instruments Antitrust Litigation, Dandong v. Pinnacle Performance Limited*, and private antitrust proceedings against Microsoft in the United States and Canada.

Ms. Summers is admitted to the New York State Bar, the United States District Courts for the Southern and Eastern Districts of New York, and the United States District Court for the District of Colorado. She graduated from Cornell University *summa cum laude* where she was ranked first in her major (B.S., 2008) and from Pace University School of Law *summa cum laude* where she was Salutatorian of her class (J.D., 2012).

Edward M. Varga, III is an associate based in our New York office focusing on securities and antitrust litigation. Mr. Varga joined the firm in 2006.

Recent cases on which Mr. Varga has worked include:

- Representation of the lead plaintiff in *In re Citigroup Inc Securities Litigation,* a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million;

- Representation, as counsel for lead plaintiff and other shareholders, in a derivative action brought against members of the Board of Directors and senior executives of Pfizer, Inc. Plaintiffs made a breach of fiduciary duty claim because defendants allegedly allowed unlawful promotion of drugs to continue even after receiving numerous "red flags" that the improper drug marketing was systemic. Pfizer agreed to pay a proposed settlement of $75 million and to make groundbreaking changes to the Board's oversight of regulatory matters;

- Representation of a group of Singapore-based investors in a securities class action against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley routed Pinnacle investors' principal into synthetic collateralized debt obligations (CDOs) that it built to fail and then bet against. As the CDOs failed by design, plaintiffs' principal was swapped to Morgan Stanley, enriching Morgan Stanley while rendering the Pinnacle Notes an all-but-total loss. This case settled for $20 million;

- Representation of companies that offered IPO securities in antitrust litigation against the 27 largest investment banks in the United States. Plaintiffs allege that the banks conspired to price fix underwriting fees in the mid-sized IPO market; and

- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation,* a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case settled for $168 million.

Mr. Varga is admitted to the New York State Bar, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Second Circuit. He graduated from Cornell University (B.S., 2000)) and from New York University Law School (J.D., 2006).

Andrew Watt is a staff attorney based in our New York office focusing on securities and antitrust litigation. Mr. Watt worked at the firm as an associate from 2005 through 2008. He then returned to work with the firm as a staff attorney in 2010.

Recent cases on which Mr. Watt has worked include:

- Representation of the lead plaintiff in *In re Citigroup Inc Securities Litigation,* a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million;

- Representation, as co-lead counsel, of exchange-based investors in futures, swaps, and other Libor-based derivative products, alleging that defendant banks colluded to misreport and manipulate Libor rates; and

- Representation of a class of direct purchasers of Prograf, a branded prescription immunosuppressant used in organ transplant patients in an antitrust action against Astellas Pharma US, Inc. Plaintiffs allege that defendant filed a baseless citizen petition with the Food and Drug Administration ("FDA"), with the sole intent of foreclosing market entry by generic competitors, that improperly extended its monopoly and kept Prograf prices at supra-competitive levels.

Mr. Watt is admitted to the New York State Bar and the United States District Courts for the Southern and Eastern Districts of New York. He graduated from Columbia College (B.A., 1994), Yale University (M.A., 1999), and Columbia University School of Law (J.D., 2002), where he was a Harlan Fiske Stone Scholar.

Prior to joining KM, Mr. Watt practiced at Roberts & Holland, LLP.

Client & Adversary Recognition

KM received the highest available commendations from the City of NY four years in a row for its work on the AWP Litigation. In each of those four years, KM's efforts on the City's behalf received the overall rating of "excellent". The City elaborated, "*Kirby did a truly excellent job and the results reflect that*" .

"The case has been in front of the Supreme Court of the United States once, and in front of the Ninth Circuit no fewer than three times. Throughout, [KM] has . . . brought a considerable degree of success . . . and thwarted attempts by other counsel who sought to settle . . . and destroy a potential billion dollars of class rights."

Plaintiff / client,
Epstein v. MCA, Inc.

"[The KM firm] proved to be a highly able and articulate advocate. Single-handedly, [KM] was able to demonstrate not only that [KM's] client had a good case but that many of the suspicions and objections held by the Nigerian Government were ill-founded."

English adversary in The Nigerian Cement Scandal

"[KM] represented us diligently and successfully. Throughout [KM's] representation of our firm, [KM's] commitment and attention to client concerns were unimpeachable."

European institutional defendant /client
involved in a multi-million dollar NASD arbitration

"Against long odds, [KM] was able to obtain a jury verdict against one of the larger, more prestigious New York law firms."

Plaintiff / client,
Vladimir v. U.S. Banknote Corporation

"[KM] represented our investors with probity, skill, and diligence. There is too much money involved in these situations to leave selection of class counsel to strangers or even to other institutions whose interests may not coincide."

Plaintiff / institutional client,
In re Cendant Corporation PRIDES Litigation

Notables

The firm has repeatedly demonstrated its ability in the field of class litigation and our success has been widely recognized. For example:

Globis Capital Partners, L.P., et al. v. The Cash Store Financial Services Inc., et al., No. 13 Civ. 3385 (S.D.N.Y.): Co-Lead Counsel. CAD $13,779,167 cash settlement, representing roughly 50% of total class-wide stock losses.

Dandong v. Pinnacle Performance Ltd., 10-cv-08086 (S.D.N.Y.). Lead Counsel. $20 million settlement.

In re Hi-Crush Partners L.P. Sec. Litig., No. 12 Civ. 8557 (S.D.N.Y.): Lead Counsel. $3.8 million settlement while class certification was pending.

In re Citigroup Inc. Securities Litigation, No. 07-cv-9901 (S.D.N.Y.). Lead counsel. $590 million settlement.

In re National City Corporation Securities, Derivative & ERISA Litigation, No. 08-cv-70004 (N.D.Oh). Lead counsel. $168 million settlement.

In re Wachovia Equity Securities Litigation, No. 08-cv-6171 (S.D.N.Y.). Lead counsel. $75 million settlement.

In re BP Propane Indirect Purchaser Antitrust Litigation, No. 06-cv-3541 (N.D.Ill. 2010). Co-lead counsel. $15 million settlement on behalf of propane purchasers.

In re J.P. Morgan Chase Cash Balance Litigation, No. 06-cv-732 (S.D.N.Y.). Co-lead counsel.

> "Plaintiff's counsel operated with a strong, genuine belief that they were litigating on behalf of a group of employees who had been injured and who needed representation and a voice, and, at great expense to [themselves], made Herculean efforts on behalf of the class over years…they're to be commended for their fight on behalf of people that they believed had been victimized."

In re Pfizer Inc. Shareholder Derivative Litigation, No. 09-cv-7822 (S.D.N.Y.). Pfizer agreed to pay a proposed settlement of $75 million and to make groundbreaking changes to the Board's oversight of regulatory matters.

In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456: *City of New York, et al. v. Abbott Laboratories, et al.*, No. 01 Civ. 12257 (D. Mass). KM represented the State of Iowa, the City of New York, and forty-two New York State counties in a lawsuit against forty defendant drug manufacturers asserting that they manipulated their average wholesale price data to inflate prices charged to government drug benefits payers. Recovery of over $225 million for the plaintiffs.

In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions, No. 05-cv-01671 (C.D. Cal). Lead counsel. $48 million settlement for indirect purchasers.

In re BISYS Securities Litigation, No. 04-cv-3840 (S.D.N.Y. 2007). Co-lead counsel. $66 million settlement.

> "In this Court's experience, relatively few cases have involved as high level of risk, as extensive discovery, and, most importantly, as positive a final result for the class members as that obtained in this case."

Cox v. Microsoft Corporation, Index No. 105193/00, Part 3 (N.Y. Sup. Ct.). Lead counsel. $350 million settlement.

In re AT&T Corp. Securities Litigation, No. 00-cv-8754 (S.D.N.Y. 2006). Sole lead counsel. $150 million settlement.

In re Adelphia Communications, Inc. Securities Litigation, No. 04-cv-05759 (S.D.N.Y. 2006). Co-lead counsel. $478 million settlement.

> "[T]hat the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."

Lapin v. Goldman Sachs & Co., No. 04-cv-2236 (S.D.N.Y.). Co-lead counsel. $29 million settlement.

Montoya v. Herley Industries, Inc., No. 06-cv-2596 (E.D. Pa). Lead counsel. $10 million settlement.

Carnegie v. Household International Inc., et al., No. 98-cv-2178 (N.D.Ill. 2006). Co-lead counsel. $39 million settlement.

> "Since counsel took over the representation of this case . . ., they have pursued this case, conducting discovery, hiring experts, preparing for trial, filing motions where necessary, opposing many motions, and representing the class with intelligence and hard work. They have obtained an excellent result for the class."

Dutton v. Harris Stratex Networks Inc. et al., **No.** 08-cv-00755 (D.Del). Lead counsel. $8.9 million settlement.

In re Isologen Inc. Securities Litigation, No. 05-cv-4983 (E.D. Pa.). Lead counsel. $4.4 million settlement.

In re Textron, Inc. Securities Litigation, No. 02-cv-0190 (D.R.I.). Co-lead counsel. $7 million settlement.

Argent Convertible Classic Arbitrage Fund, L.P. v. Amazon.com, Inc. et al., No. 01-cv-0640L (W.D. Wash. 2005). Lead counsel for class of convertible euro-denominated bond purchases. $20 million settlement.

Muzinich & Co., Inc. et al. v. Raytheon Company et al., No. 01-cv-0284 (D. Idaho 2005). Co-lead counsel. $39 million settlement.

Gordon v. Microsoft Corporation, No. 00-cv-5994 (Minn. Dist. Ct., Henn. Co. 2004). Co-lead counsel. $175 million settlement following two months of trial.

In re Visa Check/MasterMoney Antitrust Litigation, No. 96-cv-5238 (E.D.N.Y. 2003). $3 billion monetary settlement and injunctive relief.

In re Florida Microsoft Antitrust Litigation, No. 99-cv-27340 (Fl. Cir. Ct. 11th Cir., Miami/Dade Co. 2003). Co-lead counsel. $200 million settlement of antitrust claims.

In re Churchill Securities, Inc. (SIPA Proceeding), No. 99 B 5346A (Bankr. S.D.N.Y. 2003). Sole lead counsel. Over $9 million recovery for 500+ victims of pyramid scheme perpetrated by defunct brokerage firm.

In re Laidlaw Bondholder Securities Litigation, No. 00-cv-2518-17 (D. S.C. 2002). Lead counsel. $42.8 million settlement.

Cromer Finance v. Berger et al. (*In re Manhattan Fund Securities Litigatio*n), No. 00-cv-2284 (S.D.N.Y. 2002). Co-lead counsel. $65 million settlement in total.

In re Boeing Securities Litigation, No. 97-cv-715 (W.D. Wash. 2001). $92.5 million settlement.

In re MCI Non-Subscriber Telephone Rates Litigation, MDL No. 1275 (S.D. Ill. 2001). Chairman of steering committee. $88 million settlement.

In re General Instrument Corp. Securities Litigation, No. 01-cv-1351 (E.D. Pa. 2001). Co- lead counsel. $48 million settlement.

In re Bergen Brunswig/Bergen Capital Trust Securities Litigation, 99-cv-1305 and 99-cv-1462 (C.D. Cal. 2001). Co-lead counsel. $42 million settlement.

Steiner v. Aurora Foods, No. 00-cv-602 (N.D. Cal. 2000). Co-lead counsel. $36 million settlement.

Gerber v. Computer Associates International, Inc., No. 91-cv-3610 (E.D.N.Y. 2000). Multi-million dollar jury verdict in securities class action.

Rothman v. Gregor, 220 F.3d 81 (2d Cir. 2000). Principal counsel of record in appeal that resulted in first ever appellate reversal of the dismissal of a securities fraud class action under the Securities Reform Act of 1995.

Bartold v. Glendale Federal Bank, 81 Cal.App.4th 816 (2000). Ruling on behalf of hundreds of thousands of California homeowners establishing banks' duties regarding title reconveyance; substantial damages still to be calculated in this and related cases against other banks for failures to have discharged these duties.

In re Cendant Corporation PRIDES Litigation, 51 F. Supp. 2d 537, 542 (D. N.J. 1999). Lead counsel. $340 million settlement.

> "[R]esolution of this matter was greatly accelerated by the creative dynamism of counsel." * * * "We have seen the gifted execution of responsibilities by a lead counsel."

In re Waste Management, Inc. Securities Litigation, No. 97C 7709 (N.D. Ill. 1999). Co-lead counsel. $220 million settlement.

> "...[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases... in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here... I would say this has been the best representation that I have seen."

In re Bennett Funding Group, Inc. Securities Litigation, No. 96-cv-2583 (S.D.N.Y. 1999). Co-lead counsel. $140 million settlement ($125 million recovered from Generali U.S. Branch, insurer of Ponzi scheme instruments issued by Bennett Funding Group; $14 million settlement with Mahoney Cohen, Bennett's auditor).

In re MedPartners Securities Litigation, No. 98-cv-06364 (Ala. June 1999). Co-lead counsel. $56 million settlement.

In re MTC Electronic Technologies Shareholder Litigation, No. 93-cv-0876 (E.D.N.Y. 1998). Co-lead counsel. Settlement in excess of $70 million.

Skouras v. Creditanstalt International Advisers, Inc., et al., NASD Arb., No. 96-05847 (1998). Following an approximately one month hearing, successfully defeated multi-million dollar claim against major European institution.

In re Woolworth Corp. Securities Class Action Litigation, No. 94-cv-2217 (S.D.N.Y. 1997). Co-lead counsel. $20 million settlement.

In re Archer Daniels Midland Inc. Securities Litigation, No. 95-cv-2877 (C.D. Ill. 1997). Co-lead counsel. $30 million settlement.

Vladimir v. U.S. Banknote Corp., No. 94-cv-0255 (S.D.N.Y. 1997). Multi-million dollar jury verdict in § 10(b) action.

In re Archer Daniels Midland Inc. Securities Litigation, No. 95-cv-2877 (C. D. Ill. 1997). Co-lead counsel. $30 million settlement.

Epstein et al. v. MCA, Inc., et al., 50 F.3d 644 (9th Cir. 1995), *rev'd and remanded on other grounds, Matsushita Electric Industrial Co., Ltd. et al. v. Epstein et al.*, No. 94-1809, 116 S. Ct. 873 (February 27, 1996). Sole lead counsel. Appeal resulted in landmark decision concerning liability of tender offeror under section 14(d)(7) of the Williams Act, SEC rule 14d-10 and preclusive effect of a release in a state court proceeding. In its decision granting partial summary judgment to plaintiffs, the court of appeals for the Ninth Circuit stated:

> "The record shows that the performance of the Epstein plaintiffs and their counsel in pursuing this litigation has been exemplary."

In re Abbott Laboratories Shareholder Litigation, No. 92-cv-3869 (N.D. Ill. 1995). Co-lead counsel. $32.5 million settlement.

> "The record here amply demonstrates the superior quality of plaintiffs' counsel's preparation, work product, and general ability before the court."

In re Morrison Knudsen Securities Litigation, No. 94-cv-334 (D. Id. 1995). Co-lead counsel. $68 million settlement.

In re T2 Medical Inc. Securities Litigation, No. 94-cv-744 (N.D. Ga. 1995). Co-lead counsel. $50 million settlement.

Gelb v. AT&T, No. 90-cv-7212 (S.D.N.Y. 1994). Landmark decision regarding filed rate doctrine leading to injunctive relief.

In re International Technology Corporation Securities Litigation, No. 88-cv-40 (C.D. Cal. 1993). Co-lead counsel. $13 million settlement.

Colaprico v. Sun Microsystems, No. 90-cv-20710 (N.D. Cal. 1993). Co-lead counsel. $5 million settlement.

Steinfink v. Pitney Bowes, Inc., No. B90-340 (JAC) (D. Conn. 1993). Lead counsel. $4 million settlement.

In re Jackpot Securities Enterprises, Inc. Securities Litigation, CV-S-89-05-LDG (D. Nev. 1993). Lead counsel. $3 million settlement.

In re Nordstrom Inc. Securities Litigation, No. C90-295C (W.D. Wa. 1991). Co-lead counsel. $7.5 million settlement.

United Artists Litigation, No. CA 980 (Sup. Ct., L.A., Cal.). Trial counsel. $35 million settlement.

In re A.L. Williams Corp. Shareholders Litigation, C.A. No. 10881 (Delaware Ch. 1990). Lead counsel. Benefits in excess of $11 million.

In re Triangle Inds., Inc., Shareholders' Litigation, C.A. No. 10466 (Delaware Ch. 1990). Co-lead counsel. Recovery in excess of $70 million.

Schneider v. Lazard Freres, No. 38899, M-6679 (N.Y. App. Div. 1st Dept. 1990). Co-lead counsel. Landmark decision concerning liability of investment bankers in corporate buyouts. $55 million settlement.

Rothenberg v. A.L. Williams, C.A. No. 10060 (Delaware. Ch. 1989). Sole lead counsel. Benefits of at least $25 million to the class.

Kantor v. Zondervan Corporation, No. 88-cv-C5425 (W.D. Mich. 1989). Sole lead counsel. Recovery of $3.75 million.

King v. Advanced Systems, Inc., No. 84-cv-C10917 (N.D. Ill. E.D. 1988). Lead counsel. Recovery of $3.9 million (representing 90% of damages).

Straetz v. Cordis, 85-343 Civ. (SMA) (S.D. Fla. 1988). Lead counsel.

> "I want to commend counsel and each one of you for the diligence with which you've pursued the case and for the results that have been produced on both sides. I think that you have displayed the absolute optimum in the method and manner by which you have represented your respective clients, and you are indeed a credit to the legal profession, and I'm very proud to have had the opportunity to have you appear before the Court in this matter."

In re Flexi-Van Corporation, Inc. Shareholders Litigation, C.A. No. 9672 (Delaware. Ch. 1988). Co-lead counsel. $18.4 million settlement.

Entezed, Inc. v. Republic of Nigeria, I.C.C. Arb. (London 1987). Multi-million dollar award for client.

In re Carnation Company Securities Litigation, No. 84-cv-6913 (C.D. Cal. 1987). Co-lead counsel. $13 million settlement.

In re Data Switch Securities Litigation, B84 585 (RCZ) (D. Conn. 1985). Co-lead counsel. $7.5 million settlement.

Stern v. Steans, 80 Civ 3903 (GLG). The court characterized the result for the class obtained during trial to jury as "unusually successful" and "incredible" (Jun 1, 1984).

In re Datapoint Securities Litigation, SA 82 CA 338 (W.D. Tex.). Lead Counsel for a Sub-Class. $22.5 million aggregate settlement.

Malchman, et al. v. Davis, et al., No. 77-cv-5151 (S.D.N.Y. 1984):

> "It is difficult to overstate the far-reaching results of this litigation and the settlement. Few class actions have ever succeeded in altering commercial relationships of such magnitude. Few class action settlements have even approached the results achieved herein.... In the present case, the attorneys representing the class have acted with outstanding vigor and dedication . . . Although the lawyers in this litigation have appeared considerably more in the state courts than in the federal court, they have appeared in the federal court sufficiently for me to attest as to the high professional character of their work. Every issue which has come to this court has been presented by both sides with a thoroughness and zeal which is outstanding .... In sum, plaintiffs and their attorneys undertook a very large and difficult litigation in both the state and federal courts, where the stakes were enormous. This litigation was hard fought over a period of four years. Plaintiffs achieved a settlement which altered commercial relationships involving literally hundreds of millions of dollars."

* * *

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE RESIDENTIAL CAPITAL, LLC, *et al.*, Debtors.	Case No. 12-12020 (MG) Chapter 11 Jointly Administered

DECLARATION OF GARVAN F. MCDANIEL ON BEHALF OF THE LAW FIRM OF HOGAN McDANIEL, PLAINTIFFS' SPECIAL BANKRUPTCY COUNSEL, IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, GARVAN F. MCDANIEL, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a member of the law firm of Hogan McDaniel, Plaintiffs' Special Bankruptcy Counsel. I submit this declaration in support of my firm's application for an award of attorneys' fees in connection with services rendered in connection with the representation of Plaintiffs in the above-captioned proceeding, as well as the reimbursement of expenses incurred by my firm in connection therewith.

2. My firm is experienced in protecting creditors' interests in bankruptcy proceedings. My firm's attorneys and staff have significant bankruptcy experience and are well trained in all aspects of bankruptcy law. Plaintiffs' Counsel associated with us in this matter to assist them with understanding the relevant issues and developing and executing strategies on behalf of Plaintiffs and the Class relating to the bankruptcy.

3. The very substantial contribution of my firm is described in the accompanying Declaration of Mark A. Strauss in Support of Final Approval of Proposed *Rothstein* Class Action Settlement (Claim Nos. 4074 and 3966), Plan of Allocation, Award of Attorneys' Fees,

Reimbursement of Litigation Expenses, and Incentive Awards for Named Plaintiffs (the "Supporting Declaration").

4. The schedule attached hereto as Exhibit 1 contains a detailed summary indicating the amounts of time spent by each attorney of my firm who was involved in this matter. The summary also indicates the lodestar calculation based on my firm's current billing rates. For attorneys who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such attorneys in his or her final year of employment by my firm. The summary was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

5. The total number of hours expended by my firm in this matter through March 21, 2014 is 311.50. The total lodestar for my firm is $125,277.00, consisting of $125,277.00 for attorneys' time. No time was billed for professional support staff.

6. My firm's lodestar figures are based upon the firm's current billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm has incurred a total of $1,283.65 in unreimbursed expenses in connection with this matter. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and the attorneys of my firm who were principally involved in this matter.

I declare under penalty of perjury, under the laws of the State of Delaware that the foregoing is true and correct.

Executed: April 26, 2016
Wilmington, Delaware

/s/ Garvan F. McDaniel
Garvan F. McDaniel

EXHIBIT 1

HOGAN MCDANIEL
GMAC MTG LODESTAR
FROM INCEPTION THROUGH MARCH 21, 2014

Attorney	**Hours**	**Rate**	**Total**
Garvin McDaniel	191.20	$ 435	$ 83,172.00
Meg Augustine	120.30	$ 350	42,105.00
TOTAL LODESTAR	**311.50**		**$ 125,277.00**

EXHIBIT 2

HOGAN MCDANIEL
GMAC MTG EXPENSES
FROM INCEPTION THROUGH FEBRUARY 29, 2016

Description	**Amount**
Travel	$ 505.78
Filing Fees	200.00
Court Call Fees	195.00
Document Retrieval	130.50
Fedex	122.20
LexisNexis	52.16
Copies	46.40
Postage	31.61
TOTAL EXPENSES	**$ 1,283.65**

EXHIBIT 3

HOGAN♦MCDANIEL
ATTORNEYS AT LAW

1311 Delaware Avenue
Wilmington, Delaware 19806

Garvan F. McDaniel, Esquire
Telephone (302) 656-7540, Ext. 12
Facsimile (302) 656-7599

Email: gmcdaniel@dkhogan.com

EMPLOYMENT

- **The Hogan Firm**, Wilmington, DE, 6/1/2014 to 12/31/14, Member
- **Hogan♦McDaniel** 1/1/2015 to present, Partner
- **Bifferato Gentilotti**, Wilmington, DE, 4/2004 to 5/2014 – Member
- **Welch & Associates**, Wilmington, DE, 5/2002 to 3/2004 – Attorney
- **Doroshow, Pasquale, Krawitz, Siegel & Bhaya**, Wilmington, DE, 11/2001 to 5/2002, Attorney
  01/2000 to 11/2001 Law Clerk
- **The Honorable Charles C. Keeler**, Delaware County, PA, Summer 1999, Law Clerk

EDUCATION

- **Widener University School of Law**, Wilmington, Delaware, J.D. 2001
- **Saint Joseph's University**, Philadelphia, Pennsylvania, B.A., 1997

AREA OF PRACTICE

- Bankruptcy Litigation in the United States Bankruptcy Court for the District of Delaware. Represent Creditors Committees, secured lenders, and unsecured creditors.

- Creditor's Rights in Bankruptcy Court and State Court. Representing not only the rights of creditors against the debtor, but also the rights of creditors against one another.

- Real Estate Transactions and Litigation – residential and commercial closings and real estate related litigation.

- Commercial Litigation representing large financial institutions and other corporations throughout the state of Delaware. Represent largest bank in Delaware in commercial and consumer collection actions including foreclosures, replevins, note actions and asset sales.

ADMISSIONS

United States Court of Appeals for the Third Circuit, 2004
United States District Court for the District of Delaware, 2002
United States District Court for the District of New Jersey, 2002
Delaware, 2001
New Jersey, 2001

ASSOCIATIONS

New Jersey State Bar Association, 2001
Delaware State Bar Association, 2001
Delaware Trial Lawyers Association

REFERENCES AND REPRESENTATIVE CLIENTS AVAILABLE UPON REQUEST

Garvan F. McDaniel

Email: gmcdaniel@dkhogan.com

Download vCard

Garvan McDaniel regularly counsels corporate clients in the areas of creditors' rights, collections, and practice and procedure in the United States Bankruptcy Court for the District of Delaware. He also works in the area of commercial litigation and is proud to regularly represent Wilmington Savings Fund Society, Delaware's oldest and largest bank in commercial collection actions throughout the State of Delaware.

Garvan represents debtors, trustees, unsecured creditors committees, lenders, landlords, preference defendants and trade creditors seeking to protect their rights under Chapters 7, 11 and 13 of the Bankruptcy Code. Garvan also handles commercial and residential real estate transactions and litigation.

He has extensive experience in representing Trustees and Debtors in litigating causes of action under Section 547 of the Code, resulting in substantial recoveries for estates.

He regularly serves as Delaware Counsel for Unsecured Creditor Committees and Ad Hoc Committees through his relationships with some of the nations leading and largest law firms in such cases as Energy Future Holdings, Ambassador International, North American Petroleum, Ritz and Hayes Lemmerz.

Areas of Practice:

Bankruptcy, Creditor's Rights, Commercial Litigation, Commercial and Residential Real Estate Transactions and Litigation

Education:

Widener University School of Law, J.D. 2001
Saint Joseph's University, B.A. International Relations and Political Science, 1997

Bar Admissions:

United States Court of Appeals for the Third Circuit, 2004
United States District Court for the District of Delaware, 2002
Delaware, 2001
New Jersey, 2001

Professional Association and Memberships:

Member of the Delaware Trial Lawyers Association

Member of the Delaware Bar Association

Member of the American Bar Association

EXHIBIT E

***In re Residential Capital, LLC, et al*., Case No. 12-12020 (MG) -- *Rothstein* Class Action Settlement (Proof of Claim No. 4074)**

Hourly Billing Rates Submitted by Plaintiffs' Counsel in Connection with Recent Class Action Settlements in the United States District Court for the Southern District of New York (S.D.N.Y.)			
Case Name	**Firm**	**Associate & Of Counsel Hourly Rates (USD)**	**Partner Hourly Rates (USD)**
Shapiro v. JPMorgan Chase & Co., No. 11 Civ. 8331 (S.D.N.Y. Feb. 2, 2014) (ECF No. 63-1)	Entwistle & Cappucci LLP	$265 - $485	$695 - $900
	Haegens Berman Sobol Shapiro LLP	$595	$695 - $900
City of Providence v. Aeropostale, Inc., No. 11 Civ. 7132 (S.D.N.Y. Apr. 4, 2014) (ECF No. 61-4)	Labaton Sucharow LLP	$465 - $725	$775 - $875
In re Gerova Financial Group, Ltd., Sec. Litig., No. 11 Md. 02275 (S.D.N.Y. May 5, 2014) (ECF No. 84-2)	Pomerantz LLP	$520 - $625	$755 - $980
Pieter van Dongen v. CNINsure Inc., No. 11 Civ. 07320 (S.D.N.Y. May 22, 2014) (ECF No. 49)	Robbins Geller Rudman & Dowd LLP	$350 - $440	$640 - $860
New Jersey Carpenters Health Fund v. Royal Bank of Scotland Group PLC, No. 08 Civ. 05093 (S.D.N.Y. Sept. 30, 2014) (ECF No. 275)	Cohen Milstein Sellers & Toll PLLC	$415 - $780	$550 - $895
Careathers v. Red Bull Gmbh, No. 13 Civ. 369 (S.D.N.Y. Apr. 8, 2015) (ECF No. 64-4)	Kaplan Fox & Kilsheimer LLP	$510 - $625	$625 - $865
Laumann v. Nat'l Hockey League, No. 12 Civ. 1817 (S.D.N.Y. Aug. 10, 2015) (ECF No. 368)	Cohen Milstein Sellers & Toll PLLC	$330 - $465	$540 - $855
	Motley Rice, LLC	$450 - $675	$875 - $975
	Pomerantz LLP	$400 - $675	$755 - $980
Fleisher v. Phoenix Life Ins. Co., No. 11 Civ. 8405 (S.D.N.Y. Aug. 19, 2015) (ECF No. 310)	Susman Godfrey LLP	$300 - $500	$425 - $1100

***In re Residential Capital, LLC, et al*., Case No. 12-12020 (MG) -- *Rothstein* Class Action Settlement (Proof of Claim No. 4074)**

Hourly Billing Rates Submitted by Debtors' Counsel in Connection with Recent Bankruptcy Cases in the United States District Court for the Southern District of New York (Br. S.D.N.Y.)			
Case Name	**Firm**	**Associate & Of Counsel Hourly Rates (USD)**	**Partner Hourly Rates (USD)**
In re Ambac Fin. Grp., Inc. , No. 10-bk-15973 (Bankr. S.D.N.Y. June 27, 2013) (ECF No. 1344)	Morrison & Foerster LLP	$575 - $815	$775 - $1,100
In re Old HB, Inc. (f/k/a Hostess Brands, Inc.) , No. 12-bk-22052 (Bankr. S.D.N.Y. Jul. 22, 2013) (ECF No. 2716)	Kramer Levin Naftalis & Frankel LLP	$485 - $745	$770- $975
In re AMR Corp. , No. 11-bk-15463 (Bankr. S.D.N.Y. Feb. 7, 2014) (ECF No. 11685)	Jones Day	$375 - $975	$650 - $975
In re Residential Capital LLC , No. 12-bk-12020 (Bankr. S.D.N.Y. May 22, 2014) (ECF No. 6985)	Kirkland & Ellis LLP	$520 - $665	$840 - $1,060
In re Eagle Bulk Shipping Inc. , No. 14-bk-12303 (Bankr. S.D.N.Y. Oct. 9, 2014) (ECF No. 122)	Milbank, Tweed, Hadley & McCloy LLP	$410 - $900	$1,000 - $1,220
In re Doral Fin. Corp. , No. 15-bk-10573 (Bankr. S.D.N.Y. Mar. 30, 2016) (ECF No. 553)	Ropes & Gray LLP	$540 - $885	$1,200 - $1,380
In re Siga Techs., Inc. , No. 14-bk-12623 (Bankr. S.D.N.Y. Apr. 1, 2016) (ECF No. 862)	Weil, Gotshal & Manges LLP	$450 - $796.50	$846 - $1,215

EXHIBIT F

Do Class Actions Benefit Class Members?

An Empirical Analysis of Class Actions

By Mayer Brown LLP

Executive Summary

This empirical study of class action litigation—one of the few to examine class action resolutions in any rigorous way—provides strong evidence that class actions provide far less benefit to individual class members than proponents of class actions assert.

The debate thus far has consisted of competing anecdotes. Proponents of class action litigation contend that the class device effectively compensates large numbers of injured individuals. They point to cases in which class members supposedly have obtained benefits. Skeptics respond that individuals obtain little or no compensation and that class actions are most effective at generating large transaction costs—in the form of legal fees—that benefit both plaintiff and defense lawyers. They point to cases in which class members received little or nothing.

Rather than simply relying on anecdotes, this study undertakes an empirical analysis of a neutrally-selected sample set of putative consumer and employee class action lawsuits filed in or removed to federal court in 2009.[1]

Here's what we learned:

- In our entire data set, ***not one of the class actions ended in a final judgment on the merits for the plaintiffs***. And none of the class actions went to trial, either before a judge or a jury.
- The vast majority of cases produced ***no benefits to most members of the putative class***—even though in a number of those cases the lawyers who sought to represent the class often enriched themselves in the process (and the lawyers representing the defendants always did).
  - ***Approximately 14 percent of all class action cases remained pending four years after they were filed***, without resolution or even a determination of whether the case could go forward on a class-wide basis. In these cases, class members have not yet received any benefits—and likely will never receive any, based on the disposition of the other cases we studied.
  - ***Over one-third (35%) of the class actions that have been resolved were dismissed voluntarily by the plaintiff***. Many of these cases settled on an individual basis, meaning a payout to the individual named plaintiff and the lawyers who brought the suit—***even***

though the class members receive nothing. Information about who receives what in such settlements typically isn't publicly available.

— ***Just under one-third (31%) of the class actions that have been resolved were dismissed by a court on the merits***—again, meaning that class members received ***nothing***.

- One-third (33%) of resolved cases were settled on a class basis.

  — This ***settlement rate is half the average for federal court litigation,*** meaning that a class member is far less likely to have even a chance of obtaining relief than the average party suing individually.

  — ***For those cases that do settle, there is often little or no benefit for class members***.

  — What is more, ***few class members ever even see those paltry benefits—particularly in consumer class actions***. Unfortunately, because ***information regarding the distribution of class action settlements is rarely available***, the public almost never learns what percentage of a settlement is actually paid to class members. But of the six cases in our data set for which settlement distribution data was public, ***five delivered funds to only miniscule percentages of the class: 0.000006%, 0.33%, 1.5%, 9.66%, and 12%.*** Those results are consistent with other available information about settlement distribution in consumer class actions.

  — Although some cases provide for automatic distribution of benefits to class members, automatic distribution almost never is used in consumer class actions—only ***one of the 40*** settled cases fell into this category.

  — Some class actions are settled without even the potential for a monetary payment to class members, with the settlement agreement providing for ***payment to a charity or injunctive relief that, in virtually every case, provides no real benefit to class members***.

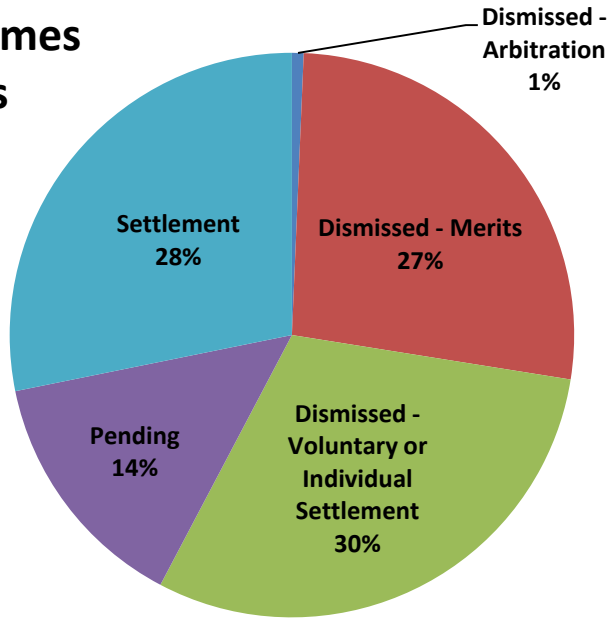
The bottom line: The hard evidence shows that class actions do not provide class members with anything close to the benefits claimed by their proponents, although they can (and do) enrich attorneys. Policymakers who are considering the efficacy of class actions cannot simply rest on a theoretical assessment of class actions' benefits or on favorable anecdotes to justify the value of class actions. Any decision-maker wishing to rest a policy determination on the claimed benefits of class actions would have to engage in significant additional empirical research to conclude—contrary to what our study indicates—that class actions actually do provide significant benefits to consumers, employees, and other class members.

Results

Overall Outcomes

Of the 148 federal court class actions we studied that were initiated in 2009, 127 cases (or nearly 86 percent) had reached a final resolution by September 1, 2013, the date when the study closed.

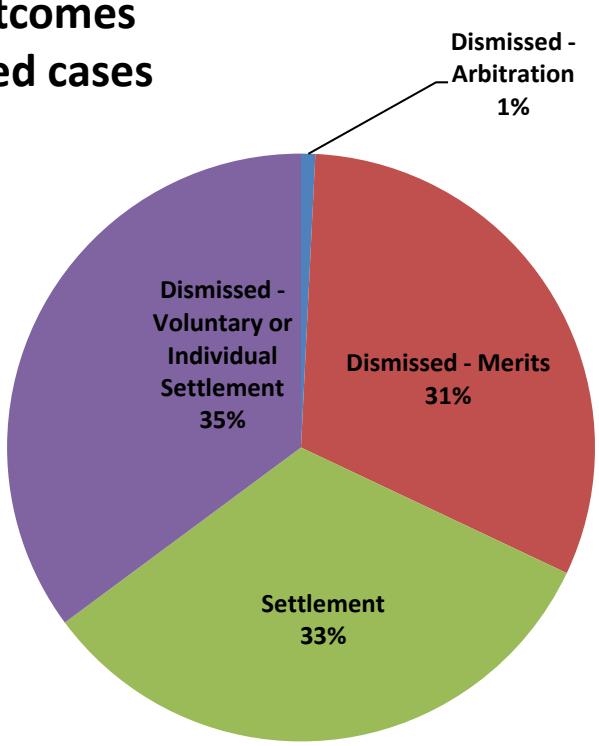
Figure 1: Outcomes in 148 cases



Zero* cases resulted in a judgment on the merits.** Of the 148 cases in our sample set, not one had gone to trial***—either before a judge or jury. And, as of the closing date of our study, ***not one resulted in a judgment for the plaintiffs on the merits***.

Unlike ordinary (non-class) disputed cases, some of which end with a judgment on the merits in favor of the plaintiffs or defendants, class actions end without any determination of the case's merits. The class action claims that make it past the pleadings stage and class-certification gateway virtually always settle—regardless of the merits of the claims.

Figure 2: Outcomes in 127 resolved cases



Indeed, Justice Ruth Bader Ginsburg has recognized that "[a] court's decision to certify a class * * * places pressure on the defendant to settle even unmeritorious claims."[2] Then-Chief Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit explained that certification of a class action, even one lacking in merit, forces defendants "to stake their companies on the outcome of a single jury trial, or be forced by fear of the risk of bankruptcy to settle even if they have no legal liability."[3] And Judge Diane Wood of the Seventh Circuit has explained that certification "is, in effect, the whole case."[4] That may be why another study of class actions reported that "[e]very case in which a motion to certify was granted, unconditionally or for settlement purposes, resulted in a class settlement."[5]

Fourteen percent of the class actions filed remain unresolved. Even though our study period encompassed more than 44 months since the filing of the last case in our sample (and 55 months from the filing of the first case), a significant number of cases—21 of the 148 in our sample, or 14%—remained pending with no resolution, let alone final judgment on the merits.[6]

And there is no reason to believe that these cases are more likely to yield a benefit for class members than the cases that have been resolved thus far. In 15 of these cases either no motion for class certification has been filed or the court has not yet ruled on the motion, and in another 2 the court denied certification. In a significant proportion of these pending cases, it seems likely that class

certification will be denied or never ruled upon before the case is ultimately dismissed. After all, prior studies indicate that nearly 4 out of every 5 lawsuits pleaded as class actions are not certified.[7]

Over one-third of the class actions that have been resolved were dismissed voluntarily by the named plaintiff and produced no relief at all for the class. Forty-five cases were voluntarily dismissed by the named plaintiff who had sought to serve as a class representative or were otherwise resolved on an individual basis. That means either that the plaintiff (and his or her counsel) simply decided not to pursue the class action lawsuit, or that the case was settled on an individual basis, without any benefit to the rest of the class. These voluntary dismissals represent 30 percent of all cases studied, or 35 percent of cases that reached a resolution by the beginning of September 2013.[8]

In fourteen of the cases that were voluntarily dismissed—approximately one-third of all voluntary dismissals in the data set—the dismissal papers, other docket entries, or contemporaneous news reports made clear that the parties were settling the claim on an individual basis, although the terms of those settlements were not available. Many of the remaining voluntary dismissals also may have resulted from individual settlements.

These settlements often provide that the plaintiff—and his or her attorney—receive recoveries themselves, even though the rest of the class that they sought to represent receive ***nothing***. When parties settle cases on an individual basis, those settlements often are confidential, and the settlement agreements therefore are not included on the court's public docket.[9]

Just under one-third of the class actions that have been resolved were dismissed on the merits. In addition to the 45 cases dismissed voluntarily by plaintiffs, 41 cases were dismissed outright by federal courts, through a dismissal on the pleadings or a grant of summary judgment for the defendant. The courts in these cases concluded that the lawsuits were meritless before even considering whether the case should be treated as a class action. These represented 27 percent of all cases studied, and 31 percent of resolved cases.

In other words, ***in over half of all putative class actions studied—and nearly two-thirds of all resolved cases studied—members of the putative class received zero relief.*** These results are depicted in Figures 1 and 2, which appear below. And these results are broadly consistent with other empirical studies of class actions. If anything, for reasons explained in Appendix C, abusive, illegitimate class actions are probably under-represented in our sample, and the sample therefore probably significantly ***overstates*** the extent to which class members benefit from the class action. For comparison, another study found that ***84% of class actions ended without any benefit to the class***.[10]

Fewer than thirty percent of the cases filed were settled. All of the remaining class actions that have been concluded were settled on a class-wide basis: The parties reached settlements in 40 cases—28% of all cases studied, or 33% of all resolved cases.[11]

This subset of class actions is the only one in our study in which it is possible that absent class members could possibly receive any benefit at all. As we next discuss, however, the benefits claimed to be associated with such settlements are largely illusory.

Class Settlements

Class actions have a significantly lower settlement rate than other federal cases. The settlement rate for our sample of cases—33% of resolved cases—is much lower than for federal court litigation as a whole. One study of federal litigation estimated that "the aggregate settlement rate across case categories" for two districts studied was "66.9 percent in 2001-2002."[12] Even the least frequently settled case category in that study—constitutional litigation—had a higher settlement rate (39%) than the 33% for the class action cases we studied.[13]

Thus, ***class actions are significantly less likely to produce settlements, and therefore significantly less likely to produce any benefit to class members, than other forms of litigation***. Settlement is the only resolution that produces even the possibility of a benefit to class members, because class actions are virtually never resolved though judgments on the merits, a fact that our study corroborates. And the settlement rate in our sample set is not an outlier: a study of class actions brought in California state court in 2009 reported a similarly low settlement rate of 31.9%.[14]

Moreover, the fact that 40 of our sample cases were settled says nothing about the extent of the benefit, if any, that those settlements conferred on class members.

Many class settlements—and virtually all settlements of consumer class actions—produce negligible benefits for class members. It is a notoriously difficult exercise to assess empirically how class members benefit from class action settlements. These settlements fall generally into three basic categories:

- **"Claims-made" settlements**, under which class members are bound by a class settlement—and thereby release all of their claims—but only obtain recoveries if they affirmatively request to do so, usually through use of a claims form.[15] Funds not distributed to claimants are returned to the defendant or, in some cases, distributed to a charity via the *cy pres* process (which creates significant additional problems, as we discuss below). They are not given to class members. Most settlements fall into this category.

- **Injunctive relief/*cy pres* settlements**, in which the relief provided to settling class members involves only injunctive relief (which may provide little or no benefit to class members) or *cy pres* distributions (in which money is paid to charitable organizations rather than class members).

- **"Automatic distribution" settlements**, in which each class member's settlement is distributed automatically to class members whose eligibility and alleged damages could be ascertained and calculated—such as retirement-plan participants in ERISA class actions.

The parties typically have no meaningful choice among these methods of structuring a settlement. Automatic distribution settlements are feasible only if the parties have the names and current addresses of class members as well as the ability to calculate each class member's alleged damages. But companies typically lack the information needed to settle cases using an automatic distribution mechanism—especially in consumer cases, where purchase records may be incomplete or unavailable, and/or class members' claimed injuries may vary widely and unpredictably.

Thus, consumer class actions are almost always resolved on a claims-made basis, and the actual amount of money delivered to class members in such cases almost always is a miniscule percentage of the stated value of the settlement. That is because, in practice, relatively few class members actually make claims in response to class settlements: many class members may not believe it is not worth their while to request the (usually very modest) awards to which they might be entitled under a settlement. And the claim-filing process is often burdensome, requiring production of years-old bills or other data to corroborate entitlement to recovery.

The class members' actual benefit from a settlement—if any—is almost never revealed. Remarkably, the public almost never has access to settlement distribution data. One study found that settlement distribution data were available in "fewer than one in five class actions in [the] sample."[16] Companies and their defense lawyers are hesitant to reveal how much a company has been required to pay out to class members, and plaintiffs' counsel have strong incentives to conceal the information because requests for attorneys' fees based on a settlement's face value will appear overstated when compared to the actual value. Judges are often happy to have the case resolved, and therefore have little to no interest in requiring transparency in the settlement distribution process.

While third-party claims administrators often possess direct information about claims rates, they are routinely bound by contract to maintain the confidentiality of that information in the absence of party permission, a court order, or other legal authority.[17] This may be a function of the incentive shared by class counsel and defense counsel to avoid facilitating grounds for a class member to object that a settlement was unfair because it provided too little tangible benefit to the class.[18] Indeed, "[h]ow many people were actually members of this class, how many of these class members actually submitted a claim form, and how much they were actually paid appear to be closely held secrets between the class counsel and the defendant."[19]

In rare cases in which class-settlement distribution data was available, few class members received any benefit at all. In our data set, ***18 cases were resolved by claims-made settlements***—44% of the total. ***We were able to obtain meaningful data regarding the distribution of settlement proceeds in only six of the 18 cases***, which is not surprising given the well-established and widespread lack of publically available information regarding the extent to which class members actually benefit from settlements. ***Five of the six cases resulted in minuscule claims rates: 0.000006%, 0.33%, 1.5%, 9.66%, and 12%.***[20] These extremely small claim-filing rates are consistent with the few other reports of claim rates in class action settlements that have come to light.

As one federal court observed, "'claims made' settlements regularly yield response rates of 10 percent or less."[21] In fact, the claims rate frequently is ***much lower***—in the single digits. Appendix A contains a list of more than 20 additional cases for which information about distributions is available, all of which involved distributions to less than seven percent of the class and many of which involved distributions to less than one percent of the class.

There is thus ample evidence to infer that ***the extremely small claims rates for cases in our sample is representative of what happens in class actions generally, and particularly in consumer class actions***.[22] And although documents filed in the remaining 12 of the 18 claims-made settlements lacked information about claims rates, there is every reason to believe that class members made claims at the small rates ordinarily observed in such cases. While some may argue that parties should use automatic distribution mechanisms instead of "claims-made" settlements to resolve class actions, the reality is that automatic distribution is difficult, if not impossible, to achieve in many (perhaps most) consumer class actions.

Only *one* consumer class action settlement was resolved through automatic distribution. Of the remaining 22 settled cases in our sample, 13 involved ***settlements with automatic distribution of settlement proceeds***. Ten of these 13 involved claims by retirement plan participants in ERISA class actions, in which the class members' eligibility and alleged damages could be easily ascertained and calculated based on their investment positions. The plans of distribution in these 10 cases generally involved lump-sum payments to the plan, which would then be allocated directly to plan members' accounts.

The other three automatic-distribution settlements were reached in consumer and employment class actions. In each case—atypical of most class actions—the defendant was in a position to ascertain and calculate class members' eligibility and alleged damages:

- In one, an employer settled claims that it conspired with health care providers and insurers to dictate medical treatment provided to about 13,764 employees injured on the job, whose identities were readily known to the defendant employer; employees who were treated by one health-care provider received a check for $520, while injured employees treated by another provider received a check for $50.[23]

- In a second settlement, a credit-card issuer settled claims that it improperly raised the minimum monthly payment and added new fees in connection with promotional loan offers. The defendant issued class members a flat-rate payment of $25, plus (for certain customers) a share of the remaining settlement fund calculated by taking into account the ways the class member had used the promotional loan and had been charged fees.[24]

- Finally, as we explain in more detail below, a third settlement resolved privacy claims against a mobile-phone gaming app developer in exchange for 45 in-game "points" that were automatically distributed to users so they could advance through the game's levels.[25]

Thus, only two consumer cases involved automatic distributions, and in one the distribution involved "game points." ***Only a single settled consumer class action—one of 127 class actions resolved—conveyed real benefits to anything more than a small percentage of the class.***

Cy pres* awards and injunctive relief serve primarily to inflate attorney's fee awards—and benefit third parties with little or no ties to the putative class.** The final group of 9 settled cases largely involved ***injunctive relief or cy pres distributions. Because these cases involve no monetary compensation to class members, it is difficult for outsiders to assess the claimed benefit. Certainly, ***in many cases "injunctive relief" has little or no real-world impact on class members, but is used to provide a basis for claiming a "benefit" to class members justifying an award of attorneys' fees to class counsel*** (as we detail below). The injunctive-relief-only settlements we reviewed included the following:

- Plaintiff subscribers of America Online ("AOL") claimed that it embedded advertisements at the bottom of the subscribers' email messages without their permission. After an early settlement was vacated on appeal for improper *cy pres* awards to unrelated charities, the parties again settled the claims, with AOL promising to tell subscribers how to opt out of email advertisements if it restarted the challenged practice.[26]

- In a class action involving claims that a social-networking app developer failed to protect properly the personally identifiable information of 32 million customers from a data security breach, the settlement provided that the defendant will undergo two audits of its information security policies with regard to maintenance of consumer records, to be made by an independent third party. The settlement explicitly reserves the rights of the plaintiff class to sue for monetary relief.[27]

- Plaintiffs brought false advertising claims against Unilever, contending that it had misrepresented the health or nutritional characteristics of "I Can't Believe It's Not Butter." As part of the settlement, Unilever was to remove all partially hydrogenated vegetable oils from its soft spreads by December 31, 2011, and from its stick products by December 31, 2012, and keep those ingredients out of those products for 10 years. Although they did not receive monetary compensation, class members released all monetary and equitable claims other than claims for personal injury.[28]

- Finally, in a class action alleging the violation of consumer protection laws arising out of the marketing of Zicam supplements (sold as a way of combating the common cold), the parties provided for a number of non-pecuniary "benefits"—all in the form of labeling changes. These include: (1) indicating that the FDA has not approved the supplements; (2) disclosing that customers with zinc allergies or sensitivities should consult a doctor; (3) informing customers that the products are not intended to be effective for the flu or for allergies; and (4) removing language recommending that customers continue to use the products for 48 hours after cold symptoms subside. If the court approves the settlement and requested attorneys' fees, the

defendant will pay plaintiff's counsel up to $1.75 million in fees in one case, and another $150,000 in a related MDL proceeding.[29]

Like injunctive relief settlements, ***the* cy pres *doctrine is being used by plaintiffs' lawyers to inflate artificially the purported size of the benefit to the class in order to justify higher awards of attorney's fees to the plaintiffs' lawyers***. In four of the cases we examined, the settlement provided that one or more charitable organizations would receive either all monetary relief, or any remaining monetary relief after claims made were paid out.

Courts often assess the propriety of an attorneys' fee award in the settlement context by comparing the percentage of the settlement paid to class members or charities with the percentage of the settlement allocated to class counsel.[30] That approach has been endorsed by the Manual for Complex Litigation.[31] If no funds are allocated to the class, or a small portion of the amount ostensibly allocated to the class is actually distributed and the remainder of the funds returned to the defendants, the relative percentages could be disturbing to a court reviewing the fairness of the settlement. But if the amount not collected by class members is contributed to a charity that can be claimed to have some tenuous relationship to the class, then the percentage allocated to attorneys' fees may appear more acceptable.

The result, as one district court has warned, is that attorney fee awards "determined using the percentage of recovery" will be "exaggerated by *cy pres* distributions that do not truly benefit the plaintiff class."[32] As Professor Martin Redish has noted, the *cy pres* form confirms that "[t]he real parties in interest in…class actions are…the plaintiffs' lawyers, who are the ones primarily responsible for bringing th[e] proceeding."[33] One district court has noted that when a consumer class action results in a *cy pres* award that "provide[s] those with individual claims no redress," where there are other "incentives" for bringing individual suits, the class action fails the requirement that the class action be "superior to other available methods" of dispute resolution.[34]

Lawyers (as opposed to class members) were the principal beneficiaries of the remaining settlements in our study. For the "*cy pres*" settlements in our data set, and the "claims made" settlements for which there is no distribution data, publicly available information provides further support for the conclusion that little in the way of benefit flows to class members. Examples from our data set include:

- ***Disproportionate allocation of settlement funds to attorneys' fees.*** Plaintiffs brought a class action alleging that the defendants improperly interfered with the medical care of injured employees in violation of Colorado law.[35] Under the settlement agreement, the defendants (who denied wrongdoing) were required to make an $8 million fund available to compensate more than 13,500 class members. But class counsel received over $4.5 million out of the $8 million—more than 55 percent of the fund.[36]

- ***Named plaintiffs object to the settlement***. In a class action against the National Football League, retired players alleged that the league was using their names and likenesses without compensation to promote the league. The NFL and some players settled the class-wide claims

under federal competition law and state right of publicity laws. But the original named plaintiffs who spearheaded the litigation objected to the settlement, arguing that it provided ***no direct payout to the retired players***.[37] Rather, it created an independent organization that would fund charitable initiatives related to the health and welfare of NFL players—and would create a licensing organization that would help fund the independent organization. Meanwhile, "[p]laintiffs' lawyers would receive a total of $7.7 million under the proposed agreement."[38]

- ***Low recovery for class members.*** Plaintiffs alleged in eight consolidated class actions that their employer, a bank, violated the federal Employee Retirement Income Security Act (ERISA) by offering its own stock as a retirement plan investment option while hiding the true extent of the bank's losses in the mortgage crisis.[39] The class settlement established a $2.5 million common fund that was ostensibly designed to compensate the employees for their losses arising from the bank's alleged breach of fiduciary duty.[40] But commentators note that, when all of the allegations in the various complaints were taken into account, plaintiffs had alleged more than $50 million in losses, meaning that class members would recover no more than five cents on the dollar.[41] And according to the plan of allocation, members of the settlement class who were calculated to have suffered damages less than $25 would receive *nothing*[42]—meaning that their claims were released without even the opportunity to receive something in exchange. Meanwhile, the plaintiffs' attorneys received a fee award amounting to 26% of the common fund ($645,595.78), plus $104,404.22 in expenses.[43]

- ***Settlement requires further use of defendant's services.*** A plaintiff filed a class action alleging that certain mobile-phone gaming apps were improperly collecting and disseminating users' mobile phone numbers.[44] Under the terms of the settlement agreement, class members were not entitled to any monetary payment. Instead, they were slated to receive 45 in-game "points" (with an approximate cash value of $3.75) per mobile device owned; the points could be used to advance through the gaming apps' levels.[45] These points could be redeemed or used only within the defendant's apps.[46] Unsurprisingly, the plaintiffs' counsel were not paid in points, but instead were awarded $125,000 in attorneys' fees.

- ***Attorneys seek fees far exceeding class recovery***. Class counsel in a case involving allegedly faulty laptops found their fee request chopped down from $2.5 million to $943,000.[47] The settlement resulted in a recovery of $889,000 to claimants, plus $500,000 in additional costs for administering the settlement—meaning that the attorneys were seeking just under ***three times*** the amount that would have gone directly to the class—and even after the fees were cut down, they still represented 106 percent of the class's direct recovery.

These characteristics are not unique to the sample cases. To the contrary, results are consistent with a significant number of class action settlements that produce minimal benefits for the class members themselves. We summarize additional examples of such settlements—taken from outside our data set—in Appendix B.

Other studies of class settlements and attorneys' fees confirm that these examples are not outliers: Such settlements commonly produce insignificant benefits to class members and outsize benefits to class counsel. A RAND study of insurance class actions found that attorneys' fees amounted to ***an average of 47% of total class-action payouts***, taking into account benefits actually claimed and distributed, rather than theoretical benefits measured by the estimated size of the class. "In a quarter of these cases, the effective fee and cost percentages were 75 percent or higher and, in 14 percent (five cases), the effective percentages were over 90 percent."[48]

In other words, for practical purposes, counsel for plaintiffs (and for defendants) are frequently the only real beneficiaries of the class actions.

Conclusion

This study confirms that class actions rarely benefit absent class members in whose interest class actions are supposedly initiated. The overwhelming majority of class actions are dismissed or dropped with ***no recovery*** for class members. And those recoveries that class settlements achieve are typically minimal—and obtained only after long delays. To be sure, not every class action is subject to these criticisms: a few class actions do achieve laudable results. But virtually none of those were consumer class actions. Certainly our analysis demonstrates—at a bare minimum—that the vast majority of class actions in our sample set cannot be viewed as efficient, effective, or beneficial to class members.

Appendix A: Additional Examples of Settlements With Payments to a Very Small Percentage of Class Members

- The Seventh Circuit vacated an order approving a class action settlement so that the district court could "evaluate whether the settlement is fair to class members," where (among other problems with the settlement) only "a *paltry* three percent" of the quarter-million-wide proposed class "had filed proofs of claim."[49] And the Third Circuit recently noted that "consumer claim filing rates *rarely* exceed seven percent, even with the most extensive notice campaigns."[50]
- One affidavit analyzed 13 cases for which data had been disclosed (and in which the settlement was approved). The median claims rate was 4.70%. The highest claims rate in those cases was 5.98%, and the lowest non-zero claims rate was 0.67%. In two cases, the claims rate was 0%—reflecting that not a single class member obtained the agreed-on recovery.[51]
- A class action alleging antitrust claims in connection with compact disc "music club" marketing settled, with only 2% of the class making claims for vouchers (valued at $4.28) for CDs.[52]
- Indeed, in many cases, the claims rate may be well under 1 percent.
  - Fair Credit Reporting Act case: court noted that "less than one percent of the class chose to participate in the settlement."[53]
  - Case alleging that a software manufacturer sold its customers unnecessary diagnostic tools: court approved settlement despite the fact that only 0.17% of customers made claims for a $10 payment, because "the settlement amount is commensurate with the strength of the class' claims and their likelihood of success absent the settlement."[54]
  - Case involving product liability claims related to alleged antenna problems with Apple's iPhone 4: court approved settlement noting that the "number of claims represents somewhere between 0.16% and 0.28% of the total class."[55]
  - Class action alleging fraud in the procurement of credit-life insurance: Supreme Court of Alabama noted that "only 113 claims" had been made in a class of approximately 104,000—or a response rate of 0.1%.[56]
  - Action alleging that restaurant chain had printed credit-card expiration dates on customers' receipts: "approximately 165 class members" out of 291,000—or fewer than 0.06% of the class—"had obtained a voucher" for one of four types of menu items worth no more than $4.78.[57]

— Class action alleging that Sears had deceptively marketed automobile-wheel alignments: "only 337 valid claims were filed out of a possible class of 1,500,000"—a take rate of just over 0.02%.[58]

— Class action alleging that video game manufacturer had improperly included explicit sexual content in the game: ***one fortieth of one percent*** of the potential class (2,676 of 10 million) made claims.[59]

— Class action involving allegations that a Ford Explorer was prone to dangerous rollovers: only 75 out of "1 million" class members—or ***less than one hundredth of one percent***—participated in the class settlement.[60]

Appendix B: Additional Examples of Settlements Providing Negligible Benefits to Class Members

- ***Class members receive extended membership in buying club.*** In a class action against DirectBuy—a club for which customers pay a membership fee to purchase goods at lower prices—the plaintiffs alleged that the defendant had misrepresented the nature of the discounts that were available through the club.[61] The settlement afforded class members nothing other than discounts for renewal or extension of their memberships in the very club that was alleged to have tricked them into joining in the first place. Meanwhile, the attorneys for the class "could receive between $350,000 and $1 million."[62]

- ***$21 million for the lawyers, pennies and coupons for the class members.*** One Missouri class settlement in a case against a brokerage house alleging breaches of fiduciary duties provided $21 million to class counsel, but only $20.42 to each of the brokerage's former customers and three $8.22 coupons to each current customer. And most of the coupons are unlikely to be redeemed.[63]

- ***Class members receive right to request $5 refund, lawyers take (and fail to disclose sufficiently) $1.3 million in fees.*** Under the settlement of a class action in which the plaintiffs alleged that Kellogg's had misrepresented that Rice Krispies are fortified with antioxidants, class members could request $5 refunds for up to three boxes of cereal purchased between June 1, 2009, and March 1, 2010.[64] Class counsel sought $1.3 million in attorneys' fees on a claim fund valued at $2.5 million to be paid out to class members.[65]

- ***Class receives opportunity to attend future conferences.*** In a 2009 settlement in the District of Columbia, a court approved a settlement against a conference organizer that failed to deliver promised services to those who had paid to attend. The settlement provides class members with nothing other than coupons to attend future events put on by the same company alleged to have bilked them in the first place; class counsel will take $1.4 million in fees.[66]

- ***Class members receive nothing, class counsel take $2.3 million.*** In a $9.5 million settlement of a class action against Facebook over the disclosure to other Facebook users of personal information about on-line purchases through Facebook's "Beacon" program, the class members received no remedy whatever for the invasions of their privacy and were barred from making future claims for any remedy. Instead, approximately $6.5 million went to create and fund a new organization that would give grants to support projects on internet privacy; a few thousand dollars went to each of the named plaintiffs as "incentive payments"; and class counsel received more than $2.3 million.[67] Meanwhile, although Facebook agreed to end the Beacon program—which it had actually already ended months before—it remained free to reinstitute the program

as long as it didn't use the name "Beacon."[68] As one federal appellate judge put it (in a dissent from a decision upholding the settlement):

> The majority approves ratification of a class action settlement in which class members get no compensation at all. ***They do not get one cent***. They do not get even an injunction against Facebook doing exactly the same thing to them again. ***Their purported lawyers get millions of dollars***. Facebook gets a bar against any claims any of them might make for breach of their privacy rights. The most we could say . . . is that in exchange for giving up any claims they may have, the exposed Facebook users get the satisfaction of contributing to a charity to be funded by Facebook, partially controlled by Facebook, and advised by a legal team consisting of Facebook's counsel and their own purported counsel whom they did not hire and have never met.[69]

The Supreme Court ultimately declined to review the Ninth Circuit's decision approving the settlement. As Chief Justice Roberts explained in a rare statement addressing the court's denial of certiorari, the objectors had challenged "the particular features of the specific *cy pres* settlement at issue," but in his view had not addressed "more fundamental concerns surrounding the use of such remedies" and the standards that should govern their use. Such concerns, he pointed out, would have to await a future case.[70]

- ***Court reduced attorneys' fees because of lack of benefit to class members.*** The Sixth Circuit upheld a district court's decision to reduce class counsel's requested fees from $5.9 million to $3.2 million in a settlement of a class action involving auto-insurance benefits.[71] In affirming the decision, the Sixth Circuit pointed out that the district court "did not believe that the class members received an especially good benefit [because] Class Counsel chose to pursue a relatively insignificant claim" as opposed to "other potential claims, …and [they] agreed to a settlement mechanism which yielded a low claims rate[.]"[72] Although the court noted that "the settlement makes available a common fund of $27,651,288.83 less any attorney fee award, costs, and administrative expenses," for individual class member benefits up to a maximum of $199.44, "only a small percent of eligible class members have made claims" totaling approximately $4 million—or 14% of the total common fund available.[73] What is more, class counsel represented in their fee motion that they provided notice to 189,305 class members and received "well over 12,000" claims—in other words, a claims-made rate of just over six percent.[74]

Appendix C: Study Design and Methodology

Identifying the Study Sample

The first step in studying putative class actions was to select a suitable pool of cases. Identifying every putative class action filed during 2009 would be impracticable—not least without extensive resources and staff support.[75] We instead used two commercial publications—the *BNA Class Action Litigation Reporter* and the *Mealey's Litigation Class Action Reporter*—to identify cases for inclusion in the study. These publications cover a wide array of developments in class action litigation, and therefore provide a diverse sample of filed class action complaints. The publications have an incentive to report comparatively more significant class actions out of all class actions filed, without wasting readers' time and attention on minor or obviously meritless suits. If anything, the sample would be skewed in favor of more significant class actions filed by prominent plaintiffs' attorneys—which should be *more meritorious on average* than a sample generated randomly from all class actions filed.

We reviewed issues of BNA and Mealey's published between December 2008 and February 2010 in order to identify cases filed in 2009. The reason for that limitation was the importance of analyzing "modern" cases that were filed after the passage of the Class Action Fairness Act of 2005, but long enough ago to track how the cases have actually progressed and whether they have been resolved. From those publications, we identified a pool of putative class actions brought by private plaintiffs that were either filed in federal court or were removed to federal court from state court in 2009. To begin with, because data about state court cases is much more difficult to obtain, we excluded a number of cases, such as those brought in state court initially (where the BNA or Mealey's report did not mention that the case was removed). We also excluded one case that was removed to federal court and then remanded to state court. This left us with 188 cases.

Nineteen of these eventually became part of eleven other consolidated cases that were also part of our data set—whether under the multidistrict litigation ("MDL") procedure, 28 U.S.C. § 1407, or otherwise (for example, cases are often consolidated when they are pending in the same federal district court). When multiple putative class actions appearing in our data set were consolidated, we treated the consolidated case as a single action to avoid the risk of "overcounting" lawsuits.[76] And when a case in our data set was consolidated with other cases not in our data set, we considered activity reflected on the docket of the "lead" consolidated case that was attributable to the individual case as filed. If after consolidation the case was resolved together with the "lead" case—such that we could not trace outcomes for the individual case separate from the "lead" case—we considered activity attributable to the "lead" case. This approach dovetails with the practical mechanics of consolidation: After cases are consolidated into an MDL, for example, the judge to whom the MDL proceeding is assigned will resolve pretrial motions presented in all the consolidated cases. And more generally, to the extent that courts treat a number of separately filed cases together as a single unit for purposes of adjudication, we have

followed the courts' lead.[77] Excluding the cases that became part of other consolidated cases in our data set left us with 169 cases.

Our next goal was to identify a set of class actions consisting of claims resembling those asserted by consumers—because that is the area under study by the CFPB. We therefore excluded three non-Rule-23 putative class actions brought by the Equal Employment Opportunity Commission.[78] We also excluded nine Fair Labor Standards Act cases.[79] Finally, we excluded nine securities cases, because the stakes and nature of those claims are very different from the claims asserted in consumer class actions, and because they are litigated in a different manner because of the procedural checks imposed by federal laws governing securities litigation.[80] Excluding these 21 EEOC, securities, and FLSA cases had next to no effect on the statistical results of our study.[81]

Accordingly, the statistics about the total number of class actions filed in 2009 are based on a set of 148 putative class actions.

Constructing the Data Set

We identified and coded a number of variables about each case. Using the federal courts' Public Access to Court Electronic Records ("PACER") system, we evaluated the filings on each case's docket. Where criteria for a case could be coded in more than one way, we scrutinized the underlying filings and rulings to determine whether the criteria better fit one or another category. For administrative purposes, we treated September 1, 2013, as the date on which our study period closed. We did not code filings and events that were entered onto the docket after that date.

Among the data collected for each case were: jurisdiction; date filed; plaintiffs' firm; assigned judge; cause of action (as reported by PACER); nature of suit (as reported by PACER); whether the case was a lead or related case (if it was in a consolidated action);[82] whether the court granted class certification; whether the case was voluntarily dismissed,[83] settled, settled but on appeal, dismissed, otherwise disposed of, or still pending; the current posture of the case;[84] and the date of the last action on the case.

For cases involving settlements, we also collected information about the date of dismissal or final settlement approval; the terms of the settlement agreement; any attorneys' fees, expenses, and incentive payments to lead plaintiffs; and the presence of any *cy pres* provision in the settlement agreement.

There are, of course, limitations to the data we collected. First, our conclusions are based on the cases that we reviewed. While there is good reason to believe that generalizations can be made to all class actions, the sample is undoubtedly smaller than the total number of class actions filed in 2009. Attempting to estimate that number reliably—let alone to examine those cases—would have exceeded the scope of our review. On the other hand, the sample includes cases from across the country and is drawn from sources that are likely to report on significant class actions—those that are of comparatively

greater importance or quality than those actions that neither BNA nor Mealey's considered worth reporting. Because the BNA and Mealey's reporters do not present a random sample of all class actions filed in 2009, it would not be useful to calculate a margin of error or otherwise attempt to quantify the extent to which the sample differs randomly from the population of all class actions filed in 2009.

Endnotes

1 For information about our methodology, see Appendix C.

2 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 445 n.3 (2010) (Ginsburg, J., dissenting).

3 *In re Rhone-Poulenc Rorer Inc.,* 51 F.3d 1293, 1299 (7th Cir. 1995).

4 Hon. Diane Wood, Circuit Judge, Remarks at the FTC Workshop: Protecting Consumer Interests in Class Actions (Sept. 13–14, 2004), in *Panel 2: Tools for Ensuring that Settlements are "Fair, Reasonable, and Adequate,"* 18 Geo. J. Legal Ethics 1197, 1213 (2005).

5 Emery G. Lee III et al., *Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two's Pre-CAFA Sample of Diversity Class Actions* at 11 (Federal Judicial Center 2008), http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Preliminary%20Findings%20from%20Phase%20Two%20Class%20Action%20Fairness%20Study%20%282008%29.pdf (discussing 30 such cases).

6 These results are broadly consistent with other studies of class actions. *See, e.g., id.* at 6 (noting that 9% of cases remained pending after at least 3.5 years).

7 *See* Thomas E. Willging & Shannon R. Wheatman, *Attorney Choice of Forum in Class Action Litigation: What Difference Does it Make?*, 81 Notre Dame L. Rev. 591, 635-36, 638 (2006).

8 In one of the cases we studied, the court compelled arbitration of the named plaintiff's claims—a determination that almost always precludes class treatment of the case.

9 Unlike class settlements under Federal Rule of Civil Procedure 23, which must be publicly disclosed and approved by the court, individual settlements of lawsuits in federal court need not be disclosed publicly, nor is court approval required. Typically, parties that agree to settle claims on an individual basis in a lawsuit pending in federal court—whether or not those claims are part of a class action—enter into confidential settlement agreements, a condition of which is that the named plaintiff will voluntarily dismiss his or her individual claims with prejudice; remaining claims that were purported to have been brought on behalf of a class may be dismissed without prejudice with respect to other class members, who may or may not assert the claim in subsequent litigation.

10 *See, e.g.,* Lee et al., *supra* note 5, at 6 (noting that in cases not remanded, 55% of cases were voluntarily dismissed without class certification or class settlement, and another 29% were dismissed by the court).

11 This category includes one case in which the parties have announced a class settlement and sought preliminary approval; five cases in which the court has granted preliminary approval (but has not yet finally approved it); one case that resulted in a settlement to fewer than all plaintiff class members; and two cases in which appeals are pending.

12 Theodore Eisenberg and Charlotte Lanvers, *What is the Settlement Rate and Why Should We Care?,* 6 J. Empir. Leg. Stud. 111, 115 (2009).

13 *Id.* at 133.

14 Hilary Hehman, *Class Certification in California: Second Interim Report from the Study of California Class Action Litigation*, Judicial Council of California: Administrative Office of the Courts, at Tables D1-D2 (Feb. 2010), http://www.courts.ca.gov/documents/classaction-certification.pdf (observing that 410 of 1294 resolved cases were settled); *see also* Patricia Hatamyar Moore, *Confronting the Myth of "State Court Class Action Abuses" Through an Understanding of Heuristics and a Plea for More Statistics*, 82 UMKC L. Rev. 133, at 165 & n.192 (2013).

15 *See* 4 *Newberg on Class Actions* § 12:35 (4th ed. 2013) ("[A] common formula in class actions for damages is to distribute the net settlement fund after payment of counsel fees and expenses, ratably among class claimants according to the amount of their recognized transactions during the relevant time period. A typical requirement is for recognized loss to be established by the filing of proofs of claim. . . .").

16 Nicholas M. Pace & William B. Rubenstein, *How Transparent are Class Action Outcomes? Empirical Research on the Availability of Class Action Claims Data* at 3, RAND Institute for Civil Justice Working Paper (July 2008), billrubenstein.com/Downloads/RAND%20Working%20Paper.pdf.

17 *Id.* at 31-32 (explaining that in a survey of class action participants, only 25% of "chief executive officers" at settlement administrators responded to the survey, and even those only "did so solely to inform [the researchers] that the information that they held was 'proprietary' to their clients, namely the attorneys that had hired them to oversee the class action claiming process"); *cf.* Deborah R. Hensler, et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 163-64 (2000) (noting difficulty in obtaining "information about the claiming process and distribution" from a "settlement administrator," who "declined to share distribution figures, suggesting that we talk to the attorneys involved with the case," and noting further that the plaintiffs' and defense attorneys had agreed between themselves "not to discuss or divulge matters related to . . . the actual distribution to the class").

18 *See* Christopher R. Leslie, *The Significance of Silence: Collective Action Problems and Class Action Settlements*, 59 Fla. L. Rev. 71, 93 (2007) (explaining that when a "notice do[es] not estimate the size of the class, . . . class members are unable to calculate their own individual recoveries" and therefore lack "sufficient bases for objecting to the proposed settlement"); *see also Thorogood v. Sears, Roebuck & Co.*, 547 F.3d 742, 744-45 (7th Cir. 2008) (Posner, J.) ("The defendants in class actions are interested in minimizing the sum of the damages they pay the class and the fees they pay the class counsel, and so they are willing to trade small damages for high attorneys' fees. . . . The result of these incentives is to forge a community of interest between class counsel, who control the plaintiff's side of the case, and the defendants. . . . The judge . . . is charged with responsibility for preventing the class lawyers from selling out the class, but it is a responsibility difficult to discharge when the judge confronts a phalanx of colluding counsel.") (citations omitted).

19 Hensler, *supra* note 17, at 165.

20 The lone outlier—a case with a 98.72% claims rate—involved the settlement of an ERISA case involving claims about the Bernie Madoff Ponzi scheme for which potentially enormous claims could be made. The math explains why an "astonishing 98.72%" of the 470 members of the damages class filed claims in this $1.2165 billion settlement. Final Order at 11, *In re Beacon Assoc. Litig.*, No. 09-cv-777 (S.D.N.Y. May 9, 2013), PACER No. 77-2. Because each class member's individual claim was worth, on average, over $2.5 million, it is unsurprising that over 460 of the class members decided to submit a claim. Needless to say, virtually no consumer or employment class actions settle for anything approaching such a large amount per class member.

21 *Sylvester v. CIGNA Corp.*, 369 F. Supp. 2d 34, 52 (D. Me. 2005).

22 Some earlier studies purported to assess the benefits received by class members, but they examined "only what defendants *agreed to pay*" in settlements, rather than "the amounts that defendants *actually paid* after the claims administration process concluded." Brian Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 826 (2010) (emphasis added); *see also* Theodore Eisenberg & Geoffrey Miller, *Attorney's Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 258-59 (2010) (using same approach).

Moreover, because Fitzpatrick studied only settlements (*see* 7 J. Empircial Legal Stud. at 812), his study failed to take into account that most putative class actions are dismissed or otherwise terminated without any benefits for class members. And Eisenberg and Miller ignored settlements that promised *only* nonpecuniary relief (such as coupons or injunctive relief) to class members. An earlier version of their study—which laid the methodological groundwork for the later expanded study in 2010 (*see id.* at 252)—appears to have counted cases involving such "soft relief" only when it was "included" along with pecuniary relief. Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27, 40 (2004).

23 Plaintiffs' Unopposed Motion for Order Preliminarily Approving Class Action Settlement at 8, *Gianzero v. Wal-Mart Stores, Inc.*, No. 09-cv-00656 (D. Colo. Nov. 21, 2011), PACER No. 464 ("*Gianzero* Preliminary Approval Motion").

24 Plaintiffs' Motion for Preliminary Approval of Class Settlement at 5-7, *In re Chase Bank USA, N.A. "Check Loan" Contract Litigation*, No. 09-md-2032 (N.D. Cal. July 23, 2012), PACER No. 338.

25 *See* notes 44–46 and accompanying text.

[26] Revised Class Action Settlement Agreement ¶¶ 20-22, *Bronster v. AOL, LLC*, No. 09-cv-3568 (C.D. Cal. July 31, 2013), PACER No. 66-10. The settlement also proposes a *cy pres* award to a more related charitable organization. *Id.* ¶ 23.

[27] Settlement Agreement and Release at 4, *Claridge v. RockYou, Inc.*, No. 09-cv-6032 (N.D. Cal. Dec. 15, 2011), PACER No. 55-1.

[28] Notice of Joint Motion for Final Approval of Class Settlement and Memorandum of Points and Authorities in Support Thereof at 4, *Red v. Unilever United States, Inc.*, No. 10-cv-387 (N.D. Cal. June 6, 2011), PACER No. 153.

[29] Plaintiffs' Memorandum in Support of Motion for Final Approval of Class Action Settlement at 4-5, *Hohman v. Matrixx Initiatives, Inc.*, No. 09-cv-3693 (N.D. Ill. May 26, 2011), PACER No. 81.

[30] *See, e.g., Strong v. BellSouth Telecommunications, Inc.*, 137 F.3d 844, 851 (5th Cir. 1998) (affirming the district court's decision to compare the "actual distribution of class benefits" against the potential recovery, and adjusting the requested fees to account for the fact that a "drastically" small 2.7 percent of the fund was distributed); *see also Int'l Precious Metals Corp. v. Waters*, 530 U.S. 1223, 1223 (2000) (O'Connor, J., respecting the denial of certiorari) (noting that fee awards disconnected from actual recovery "decouple class counsel's financial incentives from those of the class," and "encourage the filing of needless lawsuits where, because the value of each class member's individual claim is small compared to the transaction costs in obtaining recovery, the actual distribution to the class will inevitably be small").

[31] *See* Federal Judicial Center, *Manual for Complex Litigation (Fourth)* § 27.71 (2004).

[32] *SEC v. Bear Stearns & Co.*, 626 F. Supp. 2d 402, 415 (S.D.N.Y. 2009).

[33] Testimony of Martin H. Redish at 7, U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, *Hearing: Class Actions Seven Years After the Class Action Fairness Act* (June 1, 2012), available at http://judiciary.house.gov/hearings/Hearings%202012/Redish%2006012012.pdf.

[34] *Hoffer v. Landmark Chevrolet Ltd.*, 245 F.R.D. 588, 601-04 (S.D. Tex. 2007) (Rosenthal, J.). In one of the cases in our sample, the same district judge cautioned that *cy pres* awards "'violat[e] the ideal that litigation is meant to compensate individuals who were harmed,'" but ultimately approved the award because prior court precedents had authorized the use of *cy pres*. *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1076 (S.D. Tex. 2012) (Rosenthal, J.).

[35] *Gianzero* Preliminary Approval Motion at 4.

[36] *Id.* at 10.

[37] The Dryer Plaintiffs' Opposition to Preliminary Approval of the Proposed Settlement Class, *Dryer v. Nat'l Football League*, No. 09-cv-2182 (D. Minn. Mar. 20, 2013), PACER No. 264.

[38] Alison Frankel, Retired NFL stars reject settlement of their own licensing class action, REUTERS (Mar. 25, 2013), available at http://blogs.reuters.com/alison-frankel/2013/03/25/retired-nfl-stars-reject-settlement-of-their-own-licensing-class-action/.

[39] Class Action Complaint at 2, 24-25, *In re Colonial Bancgroup, Inc. ERISA Litig.*, No. 2:09-cv-792 (M.D. Ala. Aug. 20, 2009), PACER No. 1.

[40] *See, e.g.*, Final Judgment at 2-3, *In re Colonial Bancgroup, Inc. ERISA Litig.*, No. 2:09-cv-792 (M.D. Ala. Oct. 12, 2012), PACER No. 207 ("*Colonial Bancgroup* Final Judgment").

[41] Bill Donahue, *Colonial Bank Execs Pay $2.5m to Dodge ERISA Claims*, Law360 (June 18, 2012), available at http://www.law360.com/articles/350930

[42] Plan of Allocation at 3, *In re Colonial Bancgroup, Inc. ERISA Litig.*, No. 2:09-cv-792 (M.D. Ala. Sept. 14, 2012), PACER No. 192-1.

[43] *Colonial Bancgroup* Final Judgment at 8.

[44] First Amended Complaint at 2, *Turner v. Storm8, LLC*, No. 4:09-cv-05234 (N.D. Cal. June 22, 2010), PACER No. 27.

[45] Motion for Final Approval of Class Action Settlement Agreement at 3, *Turner v. Storm8, LLC*, No. 4:09-cv-05234 (N.D. Cal. Nov. 11, 2010), PACER No. 32.

[46] Settlement Agreement at 8, *Turner v. Storm8, LLC*, No. 4:09-cv-05234 (N.D. Cal. June 22, 2010), PACER No. 26-1.

[47] Attorney's Fees Slashed in Faulty Laptop Class Action, *BNA Class Action Litigation Report*, 14 Class 1497 (Oct. 25, 2013), available at http://news.bna.com/clsn/CLSNWB/split_display.adp?fedfid=37476946&vname=clasnotallissues&jd=a0e2t3w1f0&split=0. This case was among the ones we studied, but the court's decision awarding a reduced amount of attorneys' fees was issued after the closing date of our study.

[48] Nicholas M. Pace et al., *Insurance Class Actions in the United States*, Rand Inst. for Civil Just., xxiv (2007), http://www.rand.org/pubs/monographs/MG587-1.html. Another RAND study similarly found that in three of ten class actions, class counsel received more than the class. *See* Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* (Executive Summary), Rand Inst. for Civil Just., 21 (1999), http://www.rand.org/pubs/monograph_reports/MR969.html.

[49] *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 648, 650 (7th Cir. 2006) (emphasis added).

[50] *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329 n. 60 (3d Cir. 2011) (en banc) (emphasis added; quotation marks omitted).

[51] Declaration of Kevin Ranlett in Support of Defendants' Amended Motion to Compel Arbitration at 8, *Coneff v. AT&T Corp.*, No. 2:06-cv-00944 (W.D. Wash. May 27, 2009), PACER No. 199. Mr. Ranlett is a Mayer Brown lawyer.

[52] *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 370 F. Supp. 2d 320, 321 (D. Me. 2005).

[53] *Yeagley v. Wells Fargo & Co.*, 2008 WL 171083, at *2 (N.D. Cal. Jan. 18, 2008), *rev'd*, 365 F. App'x 886 (9th Cir. 2010).

[54] *LaGarde v. Support.com, Inc.*, 2013 WL 1283325, at *6 (N.D. Cal. Mar. 26, 2013). The court approved a proposed modified settlement under which the class members "who made a claim" after having been "offered a $10 cash payment * * * will now receive a $25 cash payment, rather than $10." *Id.* at *4.

[55] *In re Apple iPhone 4 Prods. Liab. Litig.*, 2012 WL 3283432, at *1 (N.D. Cal. Aug. 10, 2012).

[56] *Union Fid. Life Ins. Co. v. McCurdy*, 781 So. 2d 186, 188 (Ala. 2000).

[57] *Palamara v. Kings Family Rests.*, 2008 WL 1818453, at *2 (W.D. Pa. Apr. 22, 2008).

[58] *Moody v. Sears, Roebuck & Co.*, 2007 WL 2582193, at *5 (N.C. Super. Ct. May 7, 2007), *rev'd*, 664 S.E.2d 569 (N.C. Ct. App. 2008).

[59] *In re Grand Theft Auto Video Game Consumer Litig.*, 251 F.R.D. 139 (S.D.N.Y. 2008).

[60] Cheryl Miller, "Ford Explorer Settlement Called a Flop," *The Recorder* (July 13, 2009), http://www.law.com/jsp/article.jsp?id=1202432211252.

[61] Michelle Singletary, *Class-action Coupon Settlements are a No-Win for Consumers*, Wash. Post, Apr. 28, 2011 at A14.

[62] *Id.*

[63] *See* Stipulation of Settlement of Class Action, *Bachman v. A.G. Edwards, Inc.*, No. 22052-01266-03 (Mo. Cir. Ct. St. Louis Feb. 18, 2010), http://www.agedwardsclassactionsettlement.com/bach_20100219094521.pdf; *see also* Daniel Fisher, *Lawyer Appeals Judge's Award of $21 Million in Fees, $8 Coupons for Clients*, FORBES.COM (Jan. 10, 2011), http://blogs.forbes.com/danielfisher/2011/01/10/lawyer-appeals-judges-award-of-21-million-in-fees-8-coupons-for-clients ("The judge didn't even see fit to inquire into the lawyers' valuation of the coupon portion of the settlement, despite strong evidence that less than 10% of coupons in such cases are ever redeemed").

[64] Stipulation of Settlement at 2-8, *Weeks v. Kellogg*, No. 2:09-cv-8102 (C.D. Cal. Jan. 10, 2011), PACER No. 121.

[65] Memorandum of Law in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Plaintiff Service Awards at 4, *Weeks v. Kellogg*, No. 2:09-cv-8102 (C.D. Cal. July 18, 2011), PACER No. 135-1.

[66] *See* Memorandum Opinion at 3-5, 8, *Radosti v. Envision EMI, LLC*, No. 1:09-cv-887 (D.D.C. June 8, 2010), PACER No. 40; Order at 1-2, *Radosti v. Envision EMI, LLC*, No. 1:09-cv-887 (D.D.C. Jan. 19, 2011), PACER No. 45.

[67] *Lane v. Facebook, Inc.*, 696 F.3d 811 (9th Cir.), *reh'g en banc den.* 709 F.3d 791 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 8 (2013).

[68] Petition for Certiorari at 11-13, *Marek v. Lane*, No. 13-136 (filed July 26, 2013), 2013 WL 3944136.

[69] *Lane*, 696 F.3d at 835 (Kleinfeld, J., dissenting) (emphasis added).

[70] *Marek*, 134 S. Ct. at 9 (Roberts, C.J., respecting the denial of certiorari).

[71] *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App'x 496 (6th Cir. Aug. 26, 2011).

[72] *Id.* at 500.

[73] Opinion and Order at 10-11, *Van Horn v. Nationwide Prop. & Cas. Ins. Co*., No. 1:08-cv-605 (N.D. Ohio, Apr. 30, 2010), PACER No. 308.

[74] Class Counsel's Supplemental Memorandum in Support of Class Counsel's Motion for Award of Attorney's Fees and Reimbursement of Litigation Expenses at 3-4, 7, *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, No. 1:08-cv-605 (N.D. Ohio Mar. 19, 2010), PACER No. 296

[75] *See, e.g.,* Deborah Hensler, et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* § 4.60 (RAND Institute for Civil Justice, Monograph MR-969/1-ICJ) (1999) ("Enormous methodological obstacles confront anyone conducting research on class action litigation. The first obstacle is a dearth of statistical information. No national register of lawsuits filed with class action claims exists. Until recently, data on the number of federal class actions were substantially incomplete, and data on the number and types of state class actions are still virtually nonexistent. Consequently, no one can reliably estimate how much class action litigation exists or how the number of lawsuits has changed over time. Incomplete reporting of cases also means that it is impossible to select a random sample of all class action lawsuits for quantitative analysis.").

[76] By way of example, four cases—*Sansom v. Heartland Payment Sys., Inc.* No. 09-cv-335 (D.N.J.); *Lone Summit Bank v. Heartland Payment Sys., Inc.* No. 09-cv-581 (D.N.J.); *Tricentury Bank v. Heartland Payment Sys., Inc.* No. 09-cv-697 (D.N.J.), and *Kaissi v. Heartland Payment Sys., Inc.* No. 09-cv-540 (D.N.J.)—eventually were consolidated into *In re: Heartland Payment Sys., Inc., Customer Data Security Breach Litigation*, No. 4:09-md-02046 (S.D. Tex.).

[77] The decision to treat these consolidated cases along with the lead case had little effect on our data. A comparison of statistics on outcomes reveals that, if anything, treating consolidated class actions as a single action rather than separately tended to overstate the benefits of class actions.

In our full 188-case sample set (including the consolidated cases), 99 cases (54%) were dismissed, whether on the merits by the court, by the plaintiff voluntarily, or as an inferred settlement on an individual basis; 31 cases (16%) remain pending; 55 cases (29%) were settled on a class-wide basis; and 3 cases (2%) were dismissed after the court granted a motion to compel arbitration. By comparison, in the 169-case sample set (excluding the consolidated cases), 99 cases (57%) were dismissed, whether on the merits by the court, by the plaintiff voluntarily, or as an inferred settlement on an individual basis; 23 cases (14%) remained pending; 47 cases (28%) were settled on a class-wide basis; and 1 (1%) was dismissed after the court granted a motion to compel arbitration.

Similarly, this methodology ensures that me-too actions—cases filed by other attorneys after a complaint in a different case, raising materially identical claims—that are routinely dismissed after consolidation without any award or settlement will instead be treated as sharing in any benefits to class members that were actually obtained.

[78] The Supreme Court has held that the EEOC may pursue enforcement actions under Title VII § 706 without being certified as a class representative under Federal Rule of Civil Procedure 23. *See Gen. Tel. Co. of Nw., Inc. v. EEOC*, 446 US. 318 (1980). The Supreme Court's reasoning would appear to apply equally outside the context of Title VII. Because the EEOC does not need to pursue a Rule 23 class, the dynamics of EEOC class-wide enforcement actions differ markedly from those in Rule 23 actions.

[79] Class actions under the FLSA are certified conditionally as "opt-in" classes. Section 216(b) of the FLSA permits a right of action against an employer by an employee on behalf of "other employees similarly situated," who must have opted in by providing and filing with the court "consent in writing" to become a plaintiff. 29 U.S.C. § 216(b). These cases present different incentives for plaintiffs' counsel than consumer class actions, because they typically involve statutory attorneys' fees to prevailing plaintiffs and may involve large backpay and overtime pay awards.

[80] As one academic study explained, securities class actions "are managed under a set of class action rules distinct from those used for other Rule 23(b)(3) classes—and…the plaintiffs with the largest losses have a significant role in the litigation (including choosing class counsel and defining the terms of the settlement) and can hardly be thought of [as] an 'absent' class member." Pace & Rubenstein, *supra* note 16, at 20; *see*, *e.g.*, Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-76, 109 Stat. 737 (1995); Securities Litigation Uniform Standards Act of 1998, Pub. L. No. 105-353, 112 Stat. 3227 (1998).

[81] Recall that our 169-case sample set, which included these cases, resulted in 57% of cases dismissed, 14% pending, 28% settled on a class-wide basis, and 1% dismissed after an order compelling arbitration. *See supra* note 77. After excluding them, our 148-case sample set resulted in 57% of cases dismissed, 14% pending, 28% settled on a class-wide basis, and 1% dismissed after an order compelling arbitration. *See* Figure 1.

[82] If a case was a related case in a consolidated action, we collected information based on what happened in the lead case.

[83] If a case was voluntarily dismissed, we attempted to discern from filings (and from sources external to the docket) whether the dismissal should be attributed to a settlement on an individual basis—such as when the filings refer to a settlement, or when the named plaintiff sought to dismiss her own claims with prejudice but without prejudice to absent members of the putative class. On one hand, this is likely to understate the rate at which individual plaintiffs settle their claims individually, which in any event results in no recovery to other absent members of the putative class unless another lawsuit moves forward. On the other hand, we were often not able to discern whether the claims in a lawsuit dismissed voluntarily would continue to be litigated (or settled) by another named plaintiff under a different case caption. Thus our decision to select a readily accessible

sample of class actions may understate the extent to which members of a putative class may have their claims dismissed on the merits, or alternatively settled, in a class action under a different docket.

84 The data set includes two certified class actions in which motions for summary judgment are pending. The data set also includes an additional certified class action in which the court granted summary judgment to the plaintiffs on their claim for injunctive relief, and granted summary judgment to the defendants on all remaining claims. At the time our study closed, on September 1, 2013, the parties proposed text for an injunctive order that would resolve the parties' remaining claims on a class-wide basis.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE RESIDENTIAL CAPITAL, LLC, *et al.*, Debtors.	Case No. 12-12020 (MG) Chapter 11 Jointly Administered

CERTIFICATE OF SERVICE

I, MARK A. STRAUSS, hereby certify that on the 26th day of April, 2016, I caused a true and correct copy of the foregoing Declaration of Mark A. Strauss in Support of Final Approval of Proposed *Rothstein* Class Action Settlement (Claim Nos.4074 and 3966), Plan of Allocation, Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards for Named Plaintiffs to be served upon the persons listed below (on the attached service list), and Providing For Notice, in the manner indicated and all other parties registered for service by ECF/CME filing.

By: /s/Mark A. Strauss
Mark A. Strauss

SERVICE LIST

BY POSTAGE PRE-PAID FIRST-CLASS US MAIL	**BY HAND**
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