

**Hearing Date and Time: TBD**  
**Response Deadline: TBD**

Frank Reed  
817 Matlack Drive  
Moorestown, NJ 08057  
Telephone: (856) 956-6950  
*Creditor, Pro Se*

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

FILED  
CLERK OF DISTRICT COURT  
2016 SEP 27 A 9:08  
S.D. OF N.Y.

**MOTION PURSUANT TO F.R.C.P. 45(g) TO COMPEL  
COMPLIANCE WITH TRIAL SUBPOENA OR FOR CONTEMPT**



1212020160927000000000002

TO THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE:

Frank Reed ("Reed") hereby respectfully moves the Court pursuant to Federal Rule of Civil Procedure 45(g) to compel non-party compliance with a trial subpoena or for contempt. Specifically, non-party witness Joan Kline was served on September 15, 2016 with a subpoena pursuant to FRCP 45(c)(1) to appear before this Court to provide trial testimony in the evidentiary hearing which began on September 26, 2016.<sup>1</sup> By letter dated September 22, 2016, non-party witness Ms. Kline advised that she would not appear in response to the subpoena because of work obligations.<sup>2</sup> Ms. Kline's employer also provided a letter dated September 22, 2016 noting Ms. Kline's purported unavailability.<sup>3</sup> On September 26, 2016, non-party witness Ms. Kline failed to appear before this Court. The Court indicated that the instant motion should be filed.

Federal Rule of Civil Procedure 45(g) states as follows:

(g) CONTEMPT. The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

The 2013 Advisory Committee Notes to FRCP 45(g) state that it is "rare" for a court to use contempt sanctions without first ordering compliance with a subpoena. Civil contempt sanctions generally include fines, and in some extreme cases, imprisonment. See *Painewebber, Inc. v. Acstar Ins. Co.*, 211 F.R.D. 247, 249 (S.D.N.Y. 2002)(fine imposed for failure to comply with deposition and document subpoenas – "[t]he Court has the power under this rule to impose contempt simply on the basis of failure to comply with a subpoena"); *Forum Ins. Co. v. Keller*, No. 91-cv-4528, 1992 WL 297580 (S.D.N.Y. Oct. 8, 1992)(fine imposed for failure to comply

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<sup>1</sup> See Subpoena attached to Reed Declaration as Exhibit A. See Affidavit of Service attached to Reed Declaration as Exhibit B.

<sup>2</sup> See September 22, 2016 Joan Kline letter attached to Reed Declaration as Exhibit C.

<sup>3</sup> See September 22, 2016 St. Laurentius School letter attached to Reed Declaration as Exhibit D.

with document subpoena). Civil contempt sanctions are designed primarily to coerce the contemnor into complying with the court's demands. See *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827-30 (1994).

Here, non-party witness has failed to appear to provide testimony at trial, despite the subpoena that was served on her. Accordingly, I respectfully request that the Court grant my motion.

### CONCLUSION

Based upon the foregoing, I respectfully request that non-party witness Joan Kline be ordered to comply with the subpoena to appear at trial, or in the alternative, that sanctions for failure to appear be entered by the Court.

Dated: Moorestown, New Jersey  
September 26, 2016

Respectfully Submitted,

By: 

Frank Reed, *pro se*

EXHIBIT A

B2550 (Form 2550) - Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case or Adversary Proceeding (12/15)

**UNITED STATES BANKRUPTCY COURT**

Southern District of New York

In re Rescap  
Debtor

(Complete if issued in an adversary proceeding)

12cad  
Plaintiff

GMAC  
Defendant

Case No. 12012

Chapter 11

Adv. Proc. No. \_\_\_\_\_

**SUBPOENA TO APPEAR AND TESTIFY  
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

To: JOAN K Line  
(Name of person to whom the subpoena is directed)

☒ **YOU ARE COMMANDED** to appear in the United States Bankruptcy Court at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE <u>SDNY Bankruptcy Court</u> <u>ONE Bowling Green</u> <u>New York NY 10004</u>	COURTROOM <u>523</u>
	DATE AND TIME <u>9/26/16</u> <u>1pm</u>

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 9/14/2016

Vito Genna U.S. Bankruptcy Court, S.D.N.Y.  
CLERK OF COURT  
One Bowling Green  
New York, N.Y. 10004-1408  
OR  
Minnie L. Porter  
Minnie L. Porter  
Signature of Clerk or Deputy Clerk Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) who issues or requests this subpoena, are:

Frank Reed 856  
Frank Reed NJ@aol.com 956  
17 Matlack Dr 6950  
Moorestown NJ

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Exhibit B

B2550 (Form 2550 - Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case or Adversary Proceeding) (Page 2)

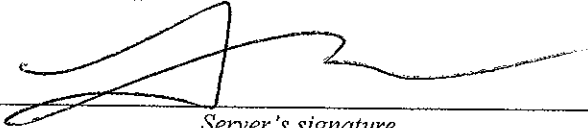
## PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any): JOAN KLINE  
on (date) 9 14 16☒ I served the subpoena by delivering a copy to the named person as follows: I hand delivered  
it to Joan Kline at her home 250 Bree Boulevard Haverhill  
Volley, PA on (date) 9 15 16; or☐ I returned the subpoena unexecuted because: \_\_\_\_\_Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ 88.30

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: 9 15 16  
\_\_\_\_\_  
Server's signature  
Frank Reed  
\_\_\_\_\_  
Printed name and title  
817 N. 1st St. P.  
MOORESTOWN, NJ 08057  
\_\_\_\_\_  
Server's address

Additional information concerning attempted service, etc.:

September 22, 2016

Frank Reed  
17 Matlack Drive  
Moorestown, NJ 08057

Dear Mr. Reed,

I have received a subpoena to appear in court in the matter of Reed v. GMAC.

Due to unforeseen circumstances I am unable to comply.

The principal of my school is not able to locate a substitute teacher to fill my position on such short notice. Additionally, no other individual but myself can address a group of parents in the evening concerning policies and procedures of my classroom.

If possible, as an alternative to appearing in court, I will testify over the phone from my workplace. Arrangements will be made so that I am available at the designated time to answer questions by the court.

Please accept my apologies.

Sincerely,



Joan Kline

Teacher

Saint Laurentius School

1608 East Berks Street

Philadelphia, PA 19125

Home: 250 Brae Bourn Road

Huntingdon Valley, PA 19006



St. Laurentius School  
of Holy Name of Jesus Parish  
1612 E. Berks Street  
Philadelphia, PA 19125  
215-423-8834  
[www.StLaurentius.org](http://www.StLaurentius.org)

September 22, 2016

Frank Reed  
17 Matlack Drive  
Moorestown, NJ 08057

Dear Mr. Reed,

I am the principal of St. Laurentius School. While we certainly like to comply with the Law, in the instance of Miss Joan Kline's subpoena, I must ask you for an alternative solution.

Our school is a small, urban, parochial school in Philadelphia, PA. It is extremely difficult to find a qualified substitute teacher on such short notice. September 26 and September 27 also happens to be "Back to School" night where parents get to meet their child's/children's teacher to learn about the curriculum, procedures, and expectations for the school year. It is vital that Ms. Kline be here for both days, to prepare herself and her classroom for the arrival of parents.

If there is any possibility of finding another way for Ms. Kline's testimony to be handled it would be greatly appreciated.

Sincerely,

*Elaine F. McKnight*  
Mrs. Elaine F. McKnight  
Principal

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 hereby certify that on the date set forth below, a true and correct copy of Frank Reed's Motion to Compel Compliance pursuant to FRCP 45(g) was served via email and overnight mail to the following:

Joan Kline  
250 Brae Bourn Road  
Hunting Valley, PA 19006

I further certify that a copy of the foregoing was emailed and mailed by overnight mail on the date set forth below to the following:

Barbara Hager  
REED SMITH LLP  
Attorneys for ResCap Borrower Claims Trust  
Princeton Forrestal Village  
136 Main Street, Suite 250  
Princeton, New Jersey 08540  
Telephone: (609) 987-0050  
Barbara K. Hager, Esq.

Dated: Moorestown, New Jersey  
September 27, 2016

Respectfully Submitted,

By: 

Frank Reed, *pro se*

Hearing Date and Time: TBD  
Response Deadline: TBD

Frank Reed  
817 Matlack Drive  
Moorestown, NJ 08057  
Telephone: (856) 956-6950  
*Creditor, Pro Se*

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

**DECLARATION OF FRANK REED  
SUBMITTED IN CONNECTION WITH  
MOTION PURSUANT TO F.R.C.P. 45(g) TO COMPEL  
COMPLIANCE WITH SUBPOENA OR FOR CONTEMPT**

I, Frank Reed, under penalty of perjury, declare as follows:

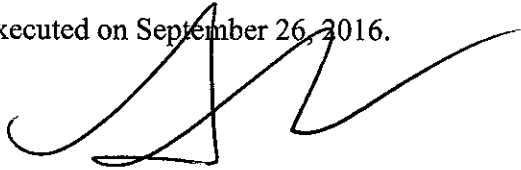
1. I am a claimant and creditor in this action.
2. I submit this Declaration in connection with my motion pursuant to Federal Rule of Civil Procedure 45(g) to compel non-party compliance with a trial subpoena or for contempt.
3. Non-party witness Joan Kline was served with a subpoena on September 15, 2016 to appear before this Court to provide trial testimony in the evidentiary hearing which began on September 26, 2016. See Subpoena attached hereto as Exhibit A. See Affidavit of Service attached hereto as Exhibit B.
4. By letter dated September 22, 2016, Ms. Kline advised that she would not appear in response to the subpoena because of work obligations. See September 22, 2016 Joan Kline letter attached hereto as Exhibit C.

5. Ms. Kline's employer also provided a letter dated September 22, 2016 noting Ms. Kline's purported unavailability. See September 22, 2016 St. Laurentius School letter attached hereto as Exhibit D.

6. On September 26, 2016, non-party witness Ms. Kline failed to appear before this Court as directed in the subpoena.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2016.

A handwritten signature in black ink, appearing to read 'Frank Reed, III', written over a horizontal line.

Frank Reed, III