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

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

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Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**RESCAP BORROWER CLAIMS TRUST'S REPLY IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT AS TO ITS OBJECTION TO AMENDED CLAIM NO
4445 FILED BY ALAN MOSS**



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The ResCap Borrower Claims Trust (the “Borrower Trust”), established pursuant to the terms of the Plan¹ confirmed in the above-captioned Chapter 11 Cases, as successor in interest to the above-captioned Debtors with respect to Borrower Claims, by and through its undersigned counsel, hereby submits this reply (the “Reply”), together with the Supplemental Declaration of Sara Lathrop, Claims Analyst for the Borrower Trust (the “Supp. Decl.”), annexed hereto as Exhibit 2, and Jordan Wishnew, counsel to the Borrower Trust (the “Wishnew Decl.”), annexed hereto as Exhibit 3, to the response of claimant Alan Moss (“Mr. Moss”) [Docket No. 10299] (the “Response”) to the *ResCap Borrower Claims Trust’s Motion for Summary Judgment as to its Objection to Amended Claim No. 4445 Filed by Alan Moss* [Docket No. 10290] (the “Motion”). In further support of the Motion, the Borrower Trust respectfully represents as follows:

I. PRELIMINARY STATEMENT

1. Through the Motion, the Borrower Trust demonstrates that there is no genuine issue as to any material fact, and that based on the uncontroverted evidence, the Claim should be disallowed and expunged as a matter of law. In the Response, Mr. Moss failed to raise any genuine issue of fact. As a result, the Court should grant the Motion and disallow and expunge the Claim.

2. The Debtors’ alleged liability to Moss derives from an alleged improper substitution of trustee. That is, while ETS was appointed substitute trustee on September 21, 2006 by TCIF, the loan itself was transferred to TCIF after that date, on June 15, 2007.² Mr. Moss asserts that ETS’s failure to examine the chain of title and discern this timing discrepancy

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

² A comprehensive review of the facts is set forth in the ResCap Borrower Claims Trust’s 7056-1 Statement, attached to the Motion as Exhibit 1. An amended 7056-1 Statement is attached hereto as Exhibit 1.

violated a duty ETS purportedly owed to Mr. Moss, and also constituted fraud and intentional infliction of emotional distress (IIED).

3. All of these claims fail for the simple reason that ETS's action or inaction with regard to the chain of title was not the cause of the Foreclosure Proceeding because Mr. Moss was in default at the time it occurred. The uncontroverted evidence provides that Mr. Moss was more than a year behind on his payments at the time of the foreclosure sale. See Lathrop Decl. ¶¶ 5-8. As a result, the owner of the Loan had every right to proceed with foreclosure under the terms of the Deed of Trust, and would have done so even if ETS or another entity had been properly appointed as substitute trustee. Thus, under California law, since Mr. Moss' failure to fulfill his contractual obligations was the precipitating factor for foreclosure, Mr. Moss has not asserted a valid claim against ETS arising from its actions.

4. In addition, Mr. Moss cannot establish a negligence claim because ETS did not owe him a duty to investigate the chain of title prior to initiating the Foreclosure Proceeding. Further, California does not permit emotional distress damages stemming purely from injury to property to support a negligence claim.

5. Finally, Mr. Moss proffers no persuasive authority to substantiate his argument that the Foreclosure Proceeding, which the owner of the Loan was entitled to pursue, qualifies as "outrageous conduct" under California law. Thus, his IIED claim also fails.

6. Based on the uncontroverted evidence provided by the Borrower Trust and the absence of disputed material facts proffered by Mr. Moss, the Court should grant the Motion for the reasons set forth therein.

II. REPLY

A. **The summary judgment motion is not premature.**

7. In the Response, Mr. Moss asserts that the Motion is premature because the Court has not re-examined its prior decision. See Response at 2-3. Confusingly, Mr. Moss also asserts, without any support, that if the Bankruptcy Court finds that ETS acted with malice, the District Court's order would require that the Objection be denied. Id. at 3. However, the issues raised in the Motion are entirely separate from the issues addressed by the Court in its prior decision, as the Motion does not rely on any sort of privilege by ETS and the arguments do not depend on whether ETS acted with malice. See Transcript of Hearing at 8, In re Residential Capital, LLC, No. 12-12020 (Bankr. S.D.N.Y. Jan. 11, 2017). As such, this Motion is ripe for adjudication and the Court does not need to re-examine the prior decision.

B. **All of Mr. Moss' causes of action fail because they were caused by his default rather than ETS's actions.**

8. California law is clear that a borrower is not harmed by "mere irregularities" in a foreclosure process where the borrower was in default under the terms of the loan and therefore would have been foreclosed on even if the irregularities had not occurred. See Bergman v. Bank of Am., No. C-13-00741-JCS, 2013 WL 5863057, at *21 (N.D. Cal. Oct. 23, 2013). For example, the plaintiffs in Bergman asserted damages because they were ousted from their home through the foreclosure process, lost their equity in the home, and were forced to retain counsel to challenge the foreclosure. Bergman, 2013 WL 5863057, at *23. The court found that Mr. and Mrs. Bergman were not prejudiced by the foreclosure, notwithstanding the allegation that the successor trustee did not have authority to conduct the sale. The court characterized the substitute trustee's alleged lack of authority as a "mere irregularity" in the process, which did not ultimately harm the plaintiffs who would have been subjected to

foreclosure regardless of that irregularity because they were in default under the terms of their loan. Bergman, 2013 WL 5863057, at *21.³

9. Here, there is no genuine dispute that Mr. Moss was in default at the time of the foreclosure sale. The Debtors' servicing notes reflect that when ETS recorded the 2007 Notice of Default on September 17, 2007, Mr. Moss was owing for the July 1, 2007 payment. See Servicing Notes at 5 of 131, attached as Exhibit I to the 7056 Statement; see also Lathrop Decl. ¶ 5.⁴ Further, when ETS conducted the Foreclosure Proceeding on May 7, 2009, the Loan was in default and owing for the January 1, 2008 payment. See Servicing Notes at 4 of 131; see also Lathrop Decl. ¶ 7.

10. While Mr. Moss asserts that he was not in default at the time of the Foreclosure Proceeding, he fails to provide any evidence in support of this contention, which is contradicted by the evidence introduced by the Borrower Trust.⁵ See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (the non-movant needs to demonstrate more than "some metaphysical doubt as to the material facts," and come forward with "specific facts showing that there is a *genuine issue for trial*." (citation omitted)). Mr. Moss also asserts that the foreclosure sale was conducted "after claimant and ResCap entered into an agreement, complied with by claimant, that took the matter out of default." Response at 17. Again, Mr. Moss provides no evidence for this statement, which is also contradicted by the Servicing Notes.⁶

³ Compared with the Bergmans, Mr. Moss has fared better—the Notices have been rescinded and Mr. Moss has retained title to his property. See Creditor Alan Moss' Amended Responses to Requests for Admissions from Debtor ResCap, responses 64 and 65, attached to the Wishnew Decl. as Exhibit A (the "RFA Responses").

⁴ Mr. Moss asserts that the Borrower Trust has not provided documents from ETS. See Response at 1. The Borrower Trust provided Mr. Moss with all of the documents in its possession related to the Loan, which came from the Debtors' books and records. Such documents were maintained by GMACM. As servicer, GMACM provided ETS the information needed to perform its duties as substitute trustee. See Supp. Decl. ¶ 4.

⁵ Mr. Moss provided no documents or statements in response to the Borrower Trust's discovery requests that would support his contention that he was not in default at the time of the Foreclosure Proceeding.

⁶ On June 11, 2008, two days before the scheduled trustee's sale, Mr. Moss contacted GMACM to request a loan modification. GMACM's servicing notes reflect that during this call GMACM offered Mr. Moss a six-month

11. Since Mr. Moss was over a year behind on his loan payments at the time of the Foreclosure Proceeding, the owner of the Loan had every right to commence foreclosure. As stated in the Motion, the Foreclosure Sale would have gone forward even if ETS had undertaken a review of the chain of title, because Mr. Moss was in default. As such, just like in Bergman, Mr. Moss cannot blame the foreclosure on the fact that ETS, rather than a different entity that was properly appointed, conducted the proceedings.

12. Mr. Moss attempts to avoid the clear holding of Bergman by arguing that it only applies where a substitute trustee could not have discovered its lack of authority. However, nothing in Bergman supports this statement, and the holding in Bergman applies not just to the substitute trustee, but also to the owner of the loan. See Bergman, 2013 WL 5863057, at *5 (noting that the wrongful foreclosure claim is brought against both the owner of the loan and the substitute trustee).

13. Similarly, in Walton v. Mortg. Elec. Reg. Sys. Inc. (which Mr. Moss fails to distinguish), the court rejected the plaintiff's claim for negligence stemming from alleged lack of authority to foreclose. 507 Fed. Appx. 720, 721 (9th Cir. 2013) ("[Plaintiff] cannot prevail on her negligence claim because even if Appellees kept inaccurate records, she admits that she fell behind on her payments and has not alleged that she could have avoided the default.") Likewise, in Freeman v. King, the court held that attorney's fees that a plaintiff

foreclosure repayment agreement consisting of a \$50,000 down payment and six monthly payments of \$6,740.78 (the "Repayment Agreement"). Mr. Moss accepted this and paid the \$50,000. The sale set for June 13, 2008 was postponed. On June 13, 2008 GMACM mailed a copy of the foreclosure repayment agreement to Mr. Moss. Mr. Moss did not make the next payment which was due on July 12, 2008 in the amount of \$6,740.78. Foreclosure was recommenced on July 18, 2008. On August 21, 2008 GMACM received a personal check from Mr. Moss in the amount of \$6,000. The check was returned to Mr. Moss as it was less the amount owed under the foreclosure repayment agreement and untimely. See Supp. Decl. at ¶ 5. Further, Mr. Moss himself has essentially admitted that he has nothing to support this statement, as he stated that he lacks sufficient information to admit or deny various requests for admission propounded by the Borrower Trust relating to any payments he made under the Repayment Agreement. See RFA Responses, Responses 55-58.

incurred defending a foreclosure that was improperly noticed were caused by the borrower's default, not the improper notice. Case No. b181091, 2007 WL 1289810, at *6 (Cal. Ct. App. May 3, 2007). Unable to refute this clear point of law, Mr. Moss resorts to asking this Court not to rely on Freeman because it was not published. See Response at 19. However, there is no local court rule that restricts the citation of an unpublished opinion.

C. The evidence does not establish that ETS breached a duty owed to Mr. Moss.

14. Mr. Moss has never established that ETS owed him a duty to examine the chain of title prior to initiating the Foreclosure Proceeding.

15. ETS's duties as a substitute trustee are circumscribed by statute: "The scope and nature of the trustee's duties are **exclusively defined by the deed of trust and the governing statutes. No other common law duties exist.**" Kachlon v. Markowitz, 85 Cal. Rptr. 3d 532, 546 (Cal. Ct. App. 2008) (emphasis added). Mr. Moss asserts that ETS violated California Civil Code § 2924. See Response at 14. The duties required by Section 2924 "are twofold: (1) to 'reconvey' the deed of trust to the trustor upon satisfaction of the debt owed to the beneficiary, resulting in a release of the lien created by the deed of trust, or (2) to initiate nonjudicial foreclosure on the property upon the trustor's default, resulting in a sale of the property." See Kachlon v. Markowitz, 85 Cal. Rptr. 3d at 546. Although Mr. Moss asks the Court to read into Cal. Civ. Code § 2924 an implied duty to investigate chain of title relating to a substitute trustee's appointment, no such duty exists.

16. Instead of addressing this clear point of law, Mr. Moss peppers the Response with irrelevant cases addressing profoundly distinguishable facts.⁷ The only cases he

⁷ See e.g., Friedman v. Merck & Co., 131 Cal. Rptr. 2d 885 (Cal. Ct. App. 2003) (examining duty to warn of animal byproducts in tuberculous test where plaintiff was strict ethical vegan and asserted injuries from exposure to animal byproduct in test); Rowland v. Christian, 443 P.2d 561 (Cal. 1968) (examining duty of host to warn social guest of defects in bathroom fixtures).

cites that address the duties of a trustee involve the trustee's failure to perform duties that are explicitly identified in relevant statutes. See Munger v. Moore, 89 Cal. Rptr. 323 (Cal. Ct. App. 1970) (involving Civil Code § 2924c, which requires a trustee to accept a tender that would cure a default liability); Kerivan v. Title Ins. & Trust Co., 195 Cal. Rptr. 53 (Cal. Ct. App. 1983) (holding that liability can be imposed on a trustee that violates California's statute explicitly requiring cancellation of a note after a foreclosure sale); Perreault v. NDEx West, LLC, No. SACV 10-00337-CJC (RNBx), 2011 WL 11682629 (C.D. Cal. Feb. 10, 2011) (holding liability can be imposed for failure to distribute foreclosure proceeds as required by statute). However, Mr. Moss has not offered a single case or statute that states a substitute trustee has a duty to launch an investigation into whether it was properly appointed as substitute trustee.

17. With respect to negligence *per se*, Mr. Moss fails to rebut the Borrower Trust's legal authority holding that violations of Civil Code sections 2924 cannot give rise to a claim for negligence *per se*. See Maomanivong v. Nat'l City Mortg. Co., No. C-13-05433 DMR, 2014 WL 4623873, at *16 (N.D. Cal. Sept. 15, 2014) (refusing to allow violations of sections 2924(a) to serve as basis for negligence *per se* claim because "permitting negligence liability [for such violations] would expand the scope of the remedies the California legislature contemplated for a violation of those statutes.")

18. In sum, in addition to failing to demonstrate any prejudice resulting from ETS's actions, Mr. Moss has failed to show that ETS owed him a duty to investigate the authority of TCIF to appoint ETS as substitute trustee. As a result, Mr. Moss' claim for negligence fails.

D. There is no evidence that would support special circumstances necessary to support emotional distress damages stemming from the negligence claim.

19. California law is also clear that unintentional tort claims such as negligence, cannot support recovery for emotional distress arising from injury to property, absent special circumstances. Terry v. Travelers Indem. Co., No. 04-2314-MCE-GGH, 2005 WL 1984482, at *2 (E.D. Cal. Aug. 15, 2005). Mr. Moss does not cite a case that rebuts this point. For example, Mr. Moss cites to Pintor v. Ong, 259 Cal. Rptr. 577 (Cal. Ct. App. 1989), which does not even involve a negligence claim. Similarly, in Spinks v. Equity Residential Briarwood Apts., 90 Cal. Rptr. 3d 453 (2009), another case cited by Mr. Moss, the court did not address whether alleged emotional distress arising from an eviction could support a negligence claim.

20. In contrast, numerous courts have held that a foreclosure action cannot support a negligence claim for emotional distress. See Ragland v. U.S. Bank Nat'l Ass'n, 147 Cal. Rptr. 3d 41, 61 (Cal. Ct. App. 2012) (finding that Plaintiff's negligent infliction of emotional distress claim premised on a wrongful foreclosure failed "because Defendants' conduct resulted only in injury to property."); Becker v. Wells Fargo Bank, N.A., No. 2:12-cv-0501-KJM-CKD-PS, 2013 WL 268935, at *5 (E.D. Cal. Jan. 23, 2013) (holding that a negligent infliction of emotional distress claim stemming from an improper notice of default failed because "emotional distress damages cannot be awarded for solely financial loss.")

E. Mr. Moss fails to offer any evidence to support his claim for IIED.

21. Finally, Mr. Moss fails to support his claim for IIED. Again, in order to support such a claim, Mr. Moss must demonstrate that ETS engaged in "extreme and outrageous conduct...with the intention of causing, or reckless disregard of the probability of causing, severe emotional distress [to the plaintiff]..." See Bock v. Hansen, 170 Cal. Rptr. 3d 293, 306 (Cal. Ct. App. 2014).

22. Mr. Moss failed to rebut the Borrower Trust's authority that foreclosing on a property after a borrower's default does not amount to "outrageous conduct," absent special circumstances (such as coercing the borrower to default or refusing to accept payment to bring a loan current). See e.g. Aguinaldo v. Ocwen Loan Serv., LLC, No. 12-CV-01393-EJD, 2012 WL 3835080, at *7 (N.D. Cal. Sep. 4, 2012) ("[A]s a matter of law . . . foreclosing on property does not amount to the 'outrageous conduct' required to support a claim for intentional infliction of emotional distress."); see also Dolan v. Bank of Am., N.A., No. 14-cv-2921-LAB (WVG), 2015 WL 5692385, at *6 (S.D. Cal. Sept. 28, 2015) (dismissing an intentional infliction claim because "there's nothing outrageous about foreclosing after a borrower defaults."); Ragland, 147 Cal. Rptr. 3d at 60 (holding that a claim for IIED could survive where the defendant induced a borrower to skip her loan payment and later refused to accept her loan payment). Mr. Moss has proffered no case, and the Borrower Trust is aware of none, that would suggest that a foreclosure initiated due to a borrower's default, where the default that was not caused by a third-party, is outrageous conduct.

23. Instead of providing a case to rebut those cited by the Borrower Trust, Mr. Moss tries to distinguish the Borrower Trust's legal authority by arguing they involved "conditional promises." See Response at 24. It is unclear why the existence of a "conditional promise" is relevant to the issue, as the discussions of the claim in the two cases Mr. Moss references do not mention conditional promises. In fact, Mehta v. Wells Fargo Bank, N.A. did not involve a conditional promise at all, as the court was very clear that an alleged promise by the servicer that the foreclosure would not occur was **not** conditioned on any action by the borrower. 737 F. Supp. 2d 1185, 1198 (S.D. Cal. 2010) ("Nor is there any indication that [defendant's promise] was conditional on any future action by Plaintiff." (citation omitted)). The

court went on to reject plaintiff's IIED claim, holding "Plaintiff was in default on his loan, Wells Fargo had the legal right to foreclose...[t]he fact that one of Defendant Wells Fargo's employees allegedly stated that the sale would not occur but the house was sold anyway is not outrageous as that word is used in this context." *Id.* at 1204 (citation omitted).

24. Mr. Moss is unable to factually distinguish the remaining cases cited by the Borrower Trust, instead arguing that their legal holdings should be ignored because the courts permitted the plaintiffs in those cases to amend their complaints.⁸ As a result, Mr. Moss cannot assert a cause of action for IIED.

CONCLUSION

25. WHEREFORE, the Borrower Trust respectfully submits that the relief requested in the Motion should be granted and the Claim disallowed and expunged in its entirety.

Dated: February 13, 2017
New York, New York

/s/ Norman S. Rosenbaum
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⁸ The Court provided Mr. Moss with the opportunity to amend the Claim, which Mr. Moss did on March 16, 2015. See Amended Claim Pursuant to Court Order Dated February 13, 2015 Filed by Alan Moss [Docket No. 8334].

Exhibit 1

Amended 7056-1 Statement

FACTS

1. Non-Debtor CJ Mortgage, Inc. originated a loan in the amount of \$612,500.00 to Mr. Moss on June 22, 2005 (the “Loan”), secured by a deed of trust on property located at 86 San Lucas Ave., Moss Beach, CA 94038 (the “Property”). See Note and Deed of Trust, attached to the Original Statement as Exhibit A and Exhibit B, respectively.

2. The Loan was subsequently transferred to Option One Mortgage Corp. (“Option One”). See Option One Assignment, attached to the Original Statement as Exhibit C.

3. Option One then transferred the Loan to TCIF, LLC (“TCIF”), and TCIF subsequently assigned the Loan to Bank of New York Trust Company (“Bank of New York”). See TCIF Assignment and Bank of New York Assignment, attached to the Original Statement as Exhibit D and Exhibit E, respectively.

4. Debtor GMAC Mortgage, LLC serviced the Loan from March 14, 2006 until servicing was transferred to Ocwen Loan Servicing, LLC (“Ocwen”) on February 16, 2013. See Decl. of Sara Lathrop, attached to the Original Statement as Exhibit F, sworn on January 23, 2017, the “Lathrop Decl.”.)

5. ETS was appointed as substitute trustee on September 21, 2006. See Substitution of Trustee, attached to the Original Statement as Exhibit G. This appointment was improper because the entity that appointed ETS did not have the authority to do so.

6. On or around August 2, 2007, GMACM sent Mr. Moss a letter indicating that the Loan was in default and owing for the July 1, 2007 payment. See August 2007 Breach Letter, attached to the Original Statement as Exhibit H.

7. As of September 17, 2007, the Loan was owing for the July 1, 2007 payment. See Servicing Notes at 5 of 131, attached to the Original Statement as Exhibit I.

8. On September 17, 2007, GMACM referred the Loan to foreclosure because the account was owing for the July 1, 2007 payment. See Servicing Notes at 5 of 131.

9. ETS recorded a notice of default on September 18, 2007 (the “2007 Notice of Default”). See 2007 Notice of Default, attached to the Original Statement as Exhibit J.

10. As of May 7, 2009, the Loan was in default and owing for the January 1, 2008 payment. See Servicing Notes at 4 of 131.

11. On May 7, 2009, ETS conducted a trustee sale (the “Foreclosure Proceeding”) and Bank of New York acquired title in the property. ETS recorded a Trustee’s Deed Upon Sale on May 18, 2009 (the “Notice of Trustee’s Deed Upon Sale”, and with the 2007 Notice of Default, the “Notices”), which granted title in the property to Bank of New York. See Notice of Trustee’s Deed Upon Sale, attached to the Original Statement as Exhibit K.

12. At the time of the Foreclosure Proceeding, there was no agreement to cancel the foreclosure sale. See Supplemental Declaration of Sara Lathrop (“Supp. Decl.”), attached as Exhibit 2 to the *Reply In Support of the ResCap Borrower Claims Trust’s Motion for Summary Judgment as to the Objection to Amended Claim No. 4445 Filed By Alan Moss* (the “Reply”), at ¶ 5.

13. No eviction proceedings were ever completed and Mr. Moss was not displaced from his home. See Supp. Decl. at ¶ 6.

14. Mr. Moss continues to reside in the Property. See Creditor Alan Moss’ Amended Responses to Request for Admission from Debtor ResCap (the “RFA Responses”), attached as Exhibit A to the Wishnew Declaration (Exhibit 3 to the Reply), Response 64.

15. Mr. Moss continues to hold title to the Property, subject to the Note and the Deed of Trust. See RFA Responses, Response 65.

16. A Notice of Rescission of the Trustee's Deed Upon Sale was recorded on September 18, 2012, and a Notice of Rescission of the 2007 Notice of Default was recorded on August 19, 2013. See Notices of Rescission, attached to the Original Statement as Exhibit L.

17. In November 2013, Bank of New York, through Ocwen as loan servicer, completed a settlement with Mr. Moss to resolve his lawsuit against Bank of New York for its actions related to the foreclosure sale. See Lathrop Decl. ¶ 9. The terms of the settlement are confidential. See id.

18. On November 7, 2012, Mr. Moss filed a proof of claim against ETS, designated as Claim No. 4445, asserting a general unsecured claim for \$750,000. See Proof of Claim, attached to the Original Statement as Exhibit M. With the Court's permission, Mr. Moss filed an amended claim on March 18, 2015 [Docket No. 8334] (the "Claim").

19. In response to a request from the Debtors for additional information regarding the Claim, Mr. Moss provided an itemization of his claim amount (the "Diligence Response"). See Diligence Response, attached to the Original Statement as Exhibit N. In the Diligence Response, Mr. Moss asserts that he is entitled to emotional distress/pain and suffering damages in the amount of \$730,000. Mr. Moss also asserts that he is entitled to \$18,460.98 in attorney's fees and costs associated with defending the Foreclosure Proceeding. See id.

Dated: February 13, 2017
New York, New York

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Counsel for the ResCap Borrower Claims Trust

Exhibit 2

Supplemental Declaration of Sara Lathrop

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

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

**SUPPLEMENTAL DECLARATION OF SARA LATHROP IN SUPPORT OF RESCAP
BORROWER CLAIMS TRUST'S REPLY IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT AS TO ITS OBJECTION TO AMENDED CLAIM NO. 4445
FILED BY ALAN MOSS**

I, Sara Lathrop, hereby declare as follows:

1. I serve as Senior Claims Analyst for the ResCap Borrower Claims Trust (the "Borrower Trust"), established pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 6030] confirmed in the above-captioned Chapter 11 Cases. During the Chapter 11 Cases, I served as Regulatory Compliance Manager and Loss Mitigation Manager in the loan servicing department of Residential Capital, LLC ("ResCap"), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors in the above-captioned Chapter 11 Cases (collectively, the "Debtors"). I began my association with ResCap in June 2006 working as an associate in the Default Division of the loan servicing operation of GMAC Mortgage, LLC ("GMACM"). In 2008, I became a Default Quality Control Specialist, a position that I held until I became a Supervisor in the Default Division in 2009. In 2011, I became a Supervisor in the Loss Mitigation Division of GMACM's loan servicing operation, and in February 2012, I became a Manager in that division. In this role, I oversaw GMACM associates in their efforts to provide borrowers with loss mitigation options and

assisted in the development of GMACM's loss mitigation policies. In January of 2013, I became the Regulatory Compliance Manager for ResCap. I became Senior Claims Analyst for ResCap in July 2013 and continued in this role when the ResCap Liquidating Trust (the "Liquidating Trust") was established in December 2013. In my current position as Senior Claims Analyst to the Borrower Trust, among my other duties, I continue to assist the Borrower Trust in connection with the claims reconciliation process.¹ I am authorized to submit this declaration (the "Declaration") in support of the *ResCap Borrower Claims Trust's Reply in Support of its Motion for Summary Judgment as to Its Objection to Amended Claim No. 4445 Filed by Alan Moss* (the "Motion").²

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

3. In my capacity as Senior Claims Analyst, I am intimately familiar with the claims reconciliation process in these Chapter 11 Cases with regard to Borrower Claims. Except as otherwise indicated, all statements in this Declaration are based upon my familiarity with the Debtors' books and records that were prepared and kept in the course of their regularly

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

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

conducted business activities (the “Books and Records”), the Debtors’ schedules of assets and liabilities and statements of financial affairs filed in these Chapter 11 Cases (collectively, the “Schedules”), my review and reconciliation of claims, and/or my review of relevant documents. I or my designee at my direction have reviewed and analyzed the proof of claim form and supporting documentation filed by Mr. Moss. Since the Plan became effective and the Borrower Trust was established, I, along with members of the Liquidating Trust’s management or employees of the Liquidating Trust have consulted with the Borrower Trust to continue the claims reconciliation process, analyze claims, and determine the appropriate treatment of the same. In connection with such review and analysis, where applicable, I or Liquidating Trust personnel, and the Liquidating Trust’s and the Borrower Trust’s professional advisors have reviewed (i) information supplied or verified by former personnel in departments within the Debtors’ various business units, (ii) the Debtors’ books and records, (iii) the Schedules, (iv) other filed proofs of claim, and/or (v) the Claims Register maintained in the Debtors’ Chapter 11 Cases.

4. Many of the documents provided to Mr. Moss in response to his document requests were maintained by GMACM. As servicer, GMACM provided ETS the information needed to perform its duties as substitute trustee.

5. In the Response, Mr. Moss asserts that ETS foreclosed despite a written agreement to cancel the scheduled foreclosure sale. The Servicing Notes do not support this allegation. On June 11, 2008, two days before the scheduled trustee’s sale, Mr. Moss contacted GMACM to request a loan modification. See Servicing Notes at 51-52 of 131. GMACM’s servicing notes reflect that during this call GMACM offered Mr. Moss a six-month foreclosure repayment agreement consisting of a \$50,000 down payment and six monthly payments of

\$6,740.78 (the “Repayment Agreement”). See id. Mr. Moss accepted this and paid the \$50,000. The sale set for June 13, 2008 was postponed. See id. at 53 of 131. On June 13, 2008 GMACM mailed a copy of the foreclosure repayment agreement to Mr. Moss. See id. at 54 of 131. Mr. Moss did not make the next payment which was due on July 12, 2008 in the amount of \$6,740.78. See id. at 56 of 131. Foreclosure was recommenced on July 18, 2008. See id. On August 21, 2008 GMACM received a personal check from Mr. Moss in the amount of \$6,000. See id. The check was returned to Mr. Moss as it was less the amount owed under the foreclosure repayment agreement and untimely. See id.

6. In my previous declaration, I stated that no eviction proceedings were commenced against Mr. Moss. I was mistaken in that statement. After the prior statement was made, I discovered entries in the Servicing Notes that indicate eviction proceedings were commenced against Mr. Moss in May of 2009. See Servicing Notes at 39 of 131. These proceedings were commenced by GMACM, not ETS. There is nothing in the Servicing Notes to suggest the eviction was ever completed, or that Mr. Moss was ever displaced from his home.

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

Dated: February 13, 2017

/s/ Sara Lathrop
Sara Lathrop
Senior Claims Analyst for ResCap
Borrower Claims Trust

Exhibit 3

Declaration of Jordan Wishnew

**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 JORDAN WISHNEW IN SUPPORT OF THE RESCAP
BORROWER TRUST'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGEMENT AS TO ITS OBJECTION TO AMENDED CLAIM NO 4445 FILED BY
ALAN MOSS**

Jordan A. Wishnew, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury:

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

2. Attached hereto as Exhibit A is a true and correct copy of Alan Moss' Amended Responses to the Trust's Requests for Admission, dated January 20, 2017.

¹ Unless otherwise indicated herein, capitalized terms shall have the meanings ascribed to them in the *ResCap Borrower Claims Trust's Ninety-Fifth Omnibus Objection to Claims ((I) No Liability Borrower Claims, (II) Reduce and Allow Borrower Claims, and (III) Allow in Full Borrower Claim* (the "Objection")

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

Executed in New York, New York on February 13, 2017

/s/ Jordan A. Wishnew

Jordan A. Wishnew

Exhibit A

1 Alan Moss
In Pro Per
2 P.O. Box 721
Moss Beach CA 94038
3 Telephone: (415)494-8314
Facsimile: (650)728-0738

4 In Propria Personum
5
6
7

8 IN THE UNITED STATES BANKRUPTCY COURT
9 IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK
10
11

12 IN RE

) BANKRUPTCY CASE No. 12-12020-MG
) CHAPTER 11
)

14 RESIDENTIAL CAPITAL LLC, et al,)
15)
16)

) Jointly Administered
) (Executive Trustee Services, Case No.
) 12-12028)
)

) [Claim No. 4445]
)

18 Debtors.)
19)

) **CREDITOR ALAN MOSS' AMENDED**
) **RESPONSES TO REQUEST FOR**
) **ADMISSIONS FROM DEBTOR**
) **RESCAP**

21 **PROPOUNDING PARTY: DEBTOR RESCAP Borrowers Claims Trust**

22 **RESPONDING PARTY: CLAIMANT ALAN MOSS**

23 **DISCOVERY DOCUMENT: REQUESTS FOR ADMISSION**

24 **SET NUMBER: ONE(1)**

25 Pursuant to Rules 7026 and 7036 of the Federal Rules of Bankruptcy
26

1 Procedure, Rules 26 and 36 of the Federal Rules of Civil Procedure, the Claimant hereby
2 objects and responds to the Borrowers Trust First Set of Requests For Admission dated
3 November 11, 2016.

4 **GENERAL OBJECTIONS**

- 5 1. The Claimant objects to the Requests to the extent that they seek to impose
6 a burden or obligation beyond those required or permitted by the Federal
7 Rules of Bankruptcy Procedure, the Local Rules of this Court, other
8 applicable law, or any order of the Court.
- 9 2. The Claimant objects to the Requests to the extent they are overly broad,
10 unduly burdensome or seek information that is not relevant to the
11 outstanding disputed issue of fact defined by the Bankruptcy Court in this
12 litigation, or are otherwise outside the scope of discovery permitted by the
13 Federal Rules of Bankruptcy Procedure. The Claimant also objects to the
14 Requests to the extent they are vague and ambiguous.
- 15 3. The Borrower Trust objects to each Request to the extent that they seek a
16 legal conclusion. *See Shultz v. Wilson Bldg., Inc.* 1969 U.S. Dist. LEXIS
17 9386 (S.D. Tex. August 14, 1969)(holding “requests for admissions which
18 [n]ecessitate a legal conclusion are generally considered objectionable.”);
19 *Norley v. HSBC Bank USA*, No. 03-cv-2318, 2003 WL 22890402, at
20 *2(SDNY Dec. 9, 2003)(dismissing “request for admissions as improper
21 because the admissions sought legal conclusions”); *Samborski v. Linear*
22 *Abatement Corp.*, NO. 96-cv-1405, 1997 WL 55949, at *1(SDNY Feb. 11,
23 1997)(holding the requests need not be answered because they “do not ask
24 for admissions of fact but instead call for plaintiffs to draw legal
25 conclusions.”); *Rivers Elec. Co., Inc. V. 4.6 Acres of Land Located In*
26

1 *Town of Catskill, County of Greene*, No. 89-cv-442, 1991 WL 255374, at
2 *4(NDNY Nov. 25, 1991)(holding requests that call for “legal conclusions
3 [are] not the proper subject matter for...a request for admissions”); *English*
4 *v. Cowell*, 117 F.R.D. 132, 135(C.D. Ill. 1986)(holding plaintiffs’ request
5 for admission that the defendant was subject to statutes relevant to the
6 action “calls for a legal conclusion and therefore it is beyond the scope of
7 a request for admissions”); *Golden Valley Microwave Foods, Inc. v.*
8 *Weaver Popcorn Co., Inc.*, 130 F.R.D. 92(N.D.Ind. 1990)(holding alleged
9 patent infringer’s requests for admissions seeking from from patent holder
10 bald legal conclusion that certain patent claims were invalid were improper.)

11 4. Rather than admitting or denying any Request to Admit, the Claimant
12 reserves the right to respond by stating an objection. *See Russo v. Baxter*
13 *healthcare Corp.* 51 F.Supp. 2d 70, 78(D.R.I. 1999)(“Where a party has
14 objected to a request for admission the burden is on the requesting party to
15 move for an order to test the validity of the objection.”)(citing Fed.R.Civ.P.
16 36 advisory committee’s note(“The requirement that the objecting party
17 move automatically for a hearing is eliminated, and the burden is on the
18 requesting party to move for an order.)).

19 5. The Claimant objects to the Requests to the extent they seek information
20 that is protected by the attorney-client privilege, that is protected by the
21 work product doctrine, that was prepared in anticipation of litigation, that
22 constitutes or discloses the mental impressions, conclusions, opinions, or
23 legal theories of an attorney or other representative of the Claimant
24 concerning this or any other litigation, or that are protected by any other
25 privilege or doctrine. To the extent that the Interrogatories call for
26

1 information protected by the attorney-client privilege, attorney work product
2 immunity, or other privileges or immunities, such information will not be
3 provided.

4 6. The Claimant objects to the Requests to the extent they purport to require
5 the Claimant to provide information outside its possession, custody or
6 control.

7 7. The Claimant objects to any explicit or implicit characterizations of facts,
8 events, circumstances, or issues in the Requests. The Claimants responses
9 are not intended to mean that the Claimant agrees with or accepts any
10 explicit or implicit characterization of facts, events, circumstances, or
11 issues in the Requests.

12 8. The Claimant has not completed discovery or preparation for the evidentiary
13 hearing in this litigation and reserves the right to rely upon any evidence
14 subsequently discovered or that may otherwise come to light during
15 discovery. The Claimant expressly reserves the right to supplement or
16 amend these responses if and when any such additional information is
17 ascertained. These responses are made by the Claimant subject to and
18 without waiving the Claimants right to introduce, use or refer to information
19 that the Claimant presently has, but that the Claimant has not yet had
20 sufficient time to analyze and evaluate, as well as the Claimants right to
21 amend or supplement these responses in the event that any information
22 previously available to the Claimant is unintentionally omitted from these
23 responses.

24 9. The Claimant objects to the requests to the extent they seek answers to
25 questions that relate to time periods outside the period relevant to this
26

1 litigation, which is the period that the Mortgage Loan was serviced by the
2 Debtors: March 2006 through February 2013.

3 10. These responses are made without in any way waiving or intending to
4 waive:

5 (i.) any objections as to the competency, relevancy, materiality, privilege,
6 or admissibility s evidence, for any purpose, of any information
7 provided in response to the Interrogatories or the subject matter
8 thereof;

9 (ii.) the right to object on any ground to the use of the information
10 provided in response to the Interrogatories or the subject matter
11 thereof in any trial, hearing, or other stage of the proceedings;

12 (iii.) the right to object on any ground at any time to a demand for further
13 response to the Interrogatories; and/or

14 (iv.) the right at any time to revise, supplement, correct, or add to these
15 responses and objections.

16
17 **SPECIFIC OBJECTION APPLICABLE TO,**
18 **AND ASSERTED AGAINST, EACH AND EVERY INTERROGATORY**
19 **PROPOUNDED BY THE BORROWER TRUST**
20

21 Each Request For Admission propounded by the Borrower Trust has been
22 untimely propounded under the Federal Rules Of Procedure, the Federal Rules of
23 Bankruptcy Procedure and the Case Management And Scheduling Order Regarding
24 ResCap Borrower's Claims Trust's Objection To Claim Number 4445 Filed By Alan
25 Moss(PACER No. 10166, filed October 5, 2016).
26

1 According to the "Certificate of Service" attached thereto, Debtors, and each
2 of them, purportedly served interrogatories on Claimant electronically on November 11,
3 2016. The Proof of Service, done by "certification," states that it was mailed via USPS
4 overnight mail on the same date, to wit November 11, 2016. However, November 11,
5 2016 was Veterans Day and the USPS was closed for the National Holiday on that date;
6 therefore, these interrogatories could not have been, and were not, served on November
7 11, 2016. In fact, the package was allegedly accepted by the USPS on November 12,
8 2016, a Saturday, according to the USPS website "priority express mail" slip attached to
9 the package; this sets forth in handwriting that the package is scheduled to be delivered
10 on November 15, 2016.

11 By its terms, the Scheduling Order requires fact discovery to close on
12 December 13, 2016.

13 The Federal Rules of Civil Procedure controls the time requirements for the
14 service of documents in this case.

15 FRCP 5(b)(2) specifically states *inter alia*:

16 **"(b) Service: How Made**

17 **(2) Service In General**

18 (C): mailing it to persons last known address--in which
19 event service is complete upon mailing;

20 (E) sending it by electronic means *if the person consented*
21 *in writing*-- in which event service is complete upon
22 transmission, but is not effective if the serving party
23 learns that it did not reach the person to be served..."

24
25 Further, FRCP 6 provides in relevant part:
26

1 **“FRCP 6: Computing and extending time:**

2 **(a) Computing Time:**

3 The following rules apply in computing any time period
4 specified in these rules:

5 **(1.) Period Stated in days or a longer unit:**

6 **(d) Additional Time After Certain Kinds of Service:**

7 When a person may or must act within a specified time
8 after being served and service is made under Rule
9 5(b)(2)(C), (D), (E) or (F), 3 days are added after the
10 period would otherwise expire under Rule 6(a).¹

11 First, regarding electronic service under FRCP 5(b)(2)(E), there is no
12 “consent in writing” in existence to being served electronically as required by FRCP
13 5(b)(2)(E). Even if there was such consent, the three additional days would make service
14 untimely.

15 Second, regarding service by mail, adding three days to November 12, 2016
16 results in a due date of December 15, 2016, two days after the date of fact discovery cut-
17 off.

18 Therefore, these Interrogatories were propounded too late and are untimely.
19 Accordingly, no responses are due.

20 **FURTHER SPECIFIC OBJECTION APPLICABLE TO,**
21 **AND ASSERTED AGAINST, EACH AND EVERY INTERROGATORY**
22 **PROPOUNDED BY THE BORROWER TRUST**

23
24 ¹ This text is effective until December 1, 2016. An amended version became effective December
25 1, 2016 which eliminated the requirement of 3 additional days on electronic service. Since the “triggering”
26 event occurred prior to December 1, 2016, it is the quoted version which is controlling.

1 These amended responses, and each of them, are being provided pursuant
2 to Court Order dated January 11, 2017. It is Claimant's position that this Order is
3 erroneous and without legal foundation, and that in overruling Claimant's original
4 responses and objections, the Court erred and violated the Federal Rules of Civil
5 Procedure. This objection is reserved for further proceedings, if and when this matter
6 is appealed.

7
8 **RESPONSES TO REQUESTS FOR ADMISSION**

9 **REQUEST FOR ADMISSION NO. 1:**

10 On June 22, 2005, CJM provided You the Mortgage Loan in the principal amount
11 of \$612,500.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

13 This Request for Admission is objected to on the basis that it is vague and
14 ambiguous as to the term Mortgage Loan. There is no such thing in California.

15
16 **REQUEST FOR ADMISSION NO. 2:**

17 The Mortgage Loan is evidenced by a Note to CJM executed by the Claimant on
18 June 22, 2005 (the "Note").

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

20 This Request for Admission is objected to on the basis that it is vague and
21 ambiguous as to the term Mortgage Loan. There is no such thing in California.

22
23 **REQUEST FOR ADMISSION NO. 3:**

24 The Mortgage Loan is secured by a deed of trust on the Property (the "Deed of
25 Trust").

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

2 This Request for Admission is objected to on the basis that it is vague and
3 ambiguous as to the term Mortgage Loan. There is no such thing in California.

4
5 **REQUEST FOR ADMISSION NO. 4:**

6 GMACM serviced the Mortgage Loan from March 14, 2006 until February 16,
7 2013.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

9 This Request for Admission is objected to on the basis that it is vague and
10 ambiguous as to the term Mortgage Loan. There is no such thing in California.

11
12 **REQUEST FOR ADMISSION 5:**

13 The Deed of Trust required the Claimant to make monthly payments on the
14 Mortgage Loan on the first day of each month, beginning with August 1, 2005.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

16 This Request for Admission is objected to on the basis that it is vague and
17 ambiguous as to the term Mortgage Loan. There is no such thing in California.

18
19 **REQUEST FOR ADMISSION NO. 6:**

20 On or around April 12, 2006, the Claimant received a letter indicating that the
21 mortgage loan was in default and owing for the August 1, 2005 payment.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

23 Subject to and without waiving its objections, this RFA is Denied on the basis that,
24 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
25 sufficient information to be able to admit or deny this RFA.

26

1 **REQUEST FOR ADMISSION NO. 7:**

2 After making a payment on or around April 13, 2006, the Mortgage Loan was
3 owing for the March 1, 2006 payment.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

5 .

6
7 **REQUEST FOR ADMISSION NO. 8:**

8 The Claimant did not timely make the monthly payment due on the Mortgage Loan
9 on March 1, 2006.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

11 Subject to and without waiving its objections, this RFA is Denied on the basis that,
12 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
13 sufficient information to be able to admit or deny this RFA.

14
15 **REQUEST FOR ADMISSION NO. 9:**

16 The Claimant did not timely make the monthly payment due on the Mortgage Loan
17 on April 1, 2006.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

19 Subject to and without waiving its objections, this RFA is Denied on the basis that,
20 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
21 sufficient information to be able to admit or deny this RFA.

22 **REQUEST FOR ADMISSION NO. 10:**

23 The Claimant did not timely make the monthly payment due on the Mortgage Loan
24 on May 1, 2006.

25 ///

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION 11:**

7 On or around May 15, 2006, the Claimant made a payment on the Mortgage Loan
8 that paid the payment due on March 1, 2006.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 12:**

15 On or around May 15, 2006, the Claimant received a letter indicating that the
16 mortgage loan was in default and owing for the April 1, 2006 payment.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 13:**

23 The Claimant did not timely make the monthly payment due on the Mortgage Loan
24 on June 1, 2006.

25 ///

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 14:**

7 As of June 16, 2006, the Mortgage Loan was owing for the April 1, 2006 payment.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

9 Subject to and without waiving its objections, this RFA is Denied on the basis that,
10 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
11 sufficient information to be able to admit or deny this RFA.

12
13 **REQUEST FOR ADMISSION NO. 15:**

14 The Claimant did not timely make the monthly mortgage payment due on the
15 Mortgage Loan on July 1, 2006.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

17 Subject to and without waiving its objections, this RFA is Denied on the basis that,
18 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
19 sufficient information to be able to admit or deny this RFA.

20
21 **REQUEST FOR ADMISSION NO. 16:**

22 The Claimant did not timely make the monthly mortgage payment due on the
23 Mortgage Loan on August 1, 2006.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

25 Subject to and without waiving its objections, this RFA is Denied on the basis that,
26

1 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
2 sufficient information to be able to admit or deny this RFA.

3
4 **REQUEST FOR ADMISSION NO. 17:**

5 The Claimant did not timely make the monthly mortgage payment due on the
6 Mortgage Loan on September 1, 2006.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

8 Subject to and without waiving its objections, this RFA is Denied on the basis that,
9 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
10 sufficient information to be able to admit or deny this RFA.

11
12 **REQUEST FOR ADMISSION NO. 18:**

13 The Claimant did not timely make the monthly mortgage payment due on the
14 Mortgage Loan on October 1, 2006.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

16 Subject to and without waiving its objections, this RFA is Denied on the basis that,
17 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
18 sufficient information to be able to admit or deny this RFA.

19
20 **REQUEST FOR ADMISSION NO. 19:**

21 The Claimant did not timely make the monthly mortgage payment due on the
22 Mortgage Loan on November 1, 2006.

23
24 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

25 Subject to and without waiving its objections, this RFA is Denied on the basis that,
26

1 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
2 sufficient information to be able to admit or deny this RFA.

3

4 **REQUEST FOR ADMISSION NO. 20:**

5 The Claimant did not timely make the monthly mortgage payment due on the
6 Mortgage Loan on December 1, 2006.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

8 Subject to and without waiving its objections, this RFA is Denied on the basis that,
9 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
10 sufficient information to be able to admit or deny this RFA.

11

12 **REQUEST FOR ADMISSION NO. 21:**

13 On or around December 1, 2006, the Claimant spoke to a representative at
14 GMACM and agreed to a repayment plan(the "First Repayment Agreement") that included
15 a deposit of \$30,000.00 due by December 8, 2006 and five remaining monthly payments
16 of \$11,700 per month.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21

22 **REQUEST FOR ADMISSION NO. 22:**

23 On or around December 11, 2006, the Claimant made a payment on the Mortgage
24 Loan of \$30,000 which covered the April through August 2006 mortgage payments,
25 making the Mortgage Loan owing for the September 1, 2006 payment.

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 23:**

7 On or around January 16, 2007, the Claimant made a payment on the Mortgage
8 Loan of \$12,067.27 which covered the September and October 2006 mortgage payments,
9 making the Mortgage Loan owing for November 1, 2006.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

11 Subject to and without waiving its objections, this RFA is Denied on the basis that,
12 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
13 sufficient information to be able to admit or deny this RFA.

14
15 **REQUEST FOR ADMISSION NO. 24:**

16 On or around February 10, 2007, the Claimant made a payment on the Mortgage
17 Loan of \$12,000 which covered the November and December 2006, making the
18 Mortgage Loan owing for the January 1, 2007 payment.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

20 Subject to and without waiving its objections, this RFA is Denied on the basis that,
21 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
22 sufficient information to be able to admit or deny this RFA.

23
24 **REQUEST FOR ADMISSION 25:**

25 On or around March 21, 2007, the Claimant made a payment on the Mortgage
26

1 Loan of \$12,000 which covered the January and February 2007, making the Mortgage
2 Loan owing for the March 1, 2007 payment.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

4 Subject to and without waiving its objections, this RFA is Denied on the basis that,
5 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
6 sufficient information to be able to admit or deny this RFA.

7
8 **REQUEST FOR ADMISSION NO. 26:**

9 On or around April 16, 2007, the Claimant received a letter indicating that the
10 mortgage loan was in default and owing for the March 1, 2007 payment.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

12 Subject to and without waiving its objections, this RFA is Denied on the basis that,
13 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
14 sufficient information to be able to admit or deny this RFA.

15
16 **REQUEST FOR ADMISSION NO. 27:**

17 On or around April 16, 2007, the Claimant spoke with a representative of GMACM
18 and was advised that the First Repayment Plan was cancelled due to non-payment.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

20 Subject to and without waiving its objections, this RFA is Denied on the basis that,
21 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
22 sufficient information to be able to admit or deny this RFA.

23
24 **REQUEST FOR ADMISSION NO. 28:**

25 The Claimant made a payment on or around April 23, 2007 that covered the March
26

1 1 and April 1, 2007 payment.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

3 Subject to and without waiving its objections, this RFA is Denied on the basis that,
4 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
5 sufficient information to be able to admit or deny this RFA.

6
7 **REQUEST FOR ADMISSION NO. 29:**

8 The Claimant did not timely make the monthly mortgage payment due on the
9 Mortgage Loan on June 1, 2007.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

11 Subject to and without waiving its objections, this RFA is Denied on the basis that,
12 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
13 sufficient information to be able to admit or deny this RFA.

14
15 **REQUEST FOR ADMISSION NO. 30:**

16 The Claimant did not timely make the monthly mortgage payment due on the
17 Mortgage Loan on June 1, 2007.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

19 Subject to and without waiving its objections, this RFA is Denied on the basis that,
20 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
21 sufficient information to be able to admit or deny this RFA.

22
23 **REQUEST FOR ADMISSION 31:**

24 On or around June 4, 2007, the Claimant received a letter indicating that the
25 mortgage loan was in default and owing for the May 1, 2007 payment.

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 32:**

7 The Claimant made a payment on or around June 25, 2007 that covered the May
8 1, 2007 payment.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 33:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on July 1, 2007.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 34:**

23 On or around July 3, 2007, the Claimant received a letter indicating that the
24 mortgage loan was in default and owing for the June 1, 2007 payment.

25 ///

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 34:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 35:**

7 The Claimant made a payment on or around August 1, 2007 that covered the June
8 1, 2007 payment.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 35:**

10 Subject to and without waiving its objections, this RFA is Denied on the
11 basis that, after a reasonable inquiry was made to obtain sufficient information, Claimant
12 lacks sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 36:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on August 1, 2007.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 37:**

23 On or around August 2, 2007, the Claimant received a letter indicating that the
24 mortgage loan was in default and owing for the July 1, 2007 payment.

25 ///

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

2 This Request For Admission is objected to on the basis set forth hereinabove under
3 General Objections and Special Objection, each of which is incorporated herein by
4 reference as though fully set forth herein.

5
6 **REQUEST FOR ADMISSION NO. 38:**

7 The Claimant did not timely make the monthly mortgage payment due on the
8 Mortgage Loan on September 1, 2007.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 39:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on October 1, 2007.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 40:**

23 The Claimant did not timely make the monthly mortgage payment due on the
24 Mortgage Loan on November 1, 2007.

25 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 41:**

7 The Claimant did not timely make the monthly mortgage payment due on the
8 Mortgage Loan on December 1, 2007.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 41:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 42:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on January 1, 2008.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 42:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 43:**

23 The Claimant did not timely make the monthly mortgage payment due on the
24 Mortgage Loan on February 1, 2008.

25 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 43:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 44:**

7 The Claimant did not timely make the monthly mortgage payment due on the
8 Mortgage Loan on March 1, 2008.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 44:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION 45:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on April 1, 2008.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 45:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 46:**

23 The Claimant did not timely make the monthly mortgage payment due on the
24 Mortgage Loan on May 1, 2008.

25 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 46:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 47:**

7 The Claimant did not timely make the monthly mortgage payment due on the
8 Mortgage Loan on June 1, 2008.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 47:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 48:**

15 By or before June 11, 2008, the claimant became aware that a foreclosure sale of
16 the Property was scheduled for June 13, 2008.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 48:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
21 to in that it is vague and ambiguous as to the term "became aware."

22
23 **REQUEST FOR ADMISSION NO. 49:**

24 On or around June 11, 2008, the Claimant contacted GMACM by phone to request
25 a loan modification.

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 49:**

2 Admit that Claimant did have a conversation with debtor around that date, but in
3 all other ways, denied.
4

5 **REQUEST FOR ADMISSION NO. 50:**

6 During the conversation on or around June 11, 2008, GMACM offered the
7 Claimant a six-month foreclosure repayment agreement(the "Second Repayment
8 Agreement").

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 50:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
13 to on the basis that it is vague and ambiguous as to the term "Second Repayment
14 Agreement," which is an unknown term to Claimant.
15

16 **REQUEST FOR ADMISSION 51:**

17 The Second Repayment Agreement consisted of \$50,000 down payment, as well
18 as six monthly payments of \$6,740.78.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 51:**

20 Subject to and without waiving its objections, this RFA is Denied on the basis that,
21 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
22 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
23 to on the basis that it is vague and ambiguous as to the term "Second Repayment
24 Agreement," which is an unknown term to Claimant.

25 ///
26

1 **REQUEST FOR ADMISSION NO. 52:**

2 The Claimant paid the \$50,000 down payment required by the Second Repayment
3 Agreement on or around June 13, 2008.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 52:**

5 Subject to and without waiving its objections, this RFA is Denied on the basis that,
6 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
7 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
8 to on the basis that it is vague and ambiguous as to the term "Second Repayment
9 Agreement," which is an unknown term to Claimant. Admit that Claimant paid \$50,000
10 to debtor somewhere around that time period, but deny that it was "required" by any so-
11 called "Second Repayment Plan."

12

13 **REQUEST FOR ADMISSION NO. 53:**

14 On or around June 13, 2008, the Claimant received a copy of the Second
15 Repayment Agreement.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 53:**

17 Subject to and without waiving its objections, this RFA is Denied on the basis that,
18 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
19 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
20 to on the basis that it is vague and ambiguous as to the term "Second Repayment
21 Agreement," which is an unknown term to Claimant. Deny that Claimant ever received
22 any such document.

23

24 **REQUEST FOR ADMISSION NO. 54:**

25 The Claimant did not make the payment under the Second Repayment Agreement
26

1 due on July 12, 2008.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 54:**

3 Subject to and without waiving its objections, this RFA is Denied on the basis that,
4 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
5 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
6 to on the basis that it is vague and ambiguous as to the term "Second Repayment
7 Agreement," which is an unknown term to Claimant.

8
9 **REQUEST FOR ADMISSION NO. 55:**

10 The Claimant did not make the payment under the Second Repayment Agreement
11 due on August 12, 2008.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 55:**

13 Subject to and without waiving its objections, this RFA is Denied on the basis that,
14 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
15 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
16 to on the basis that it is vague and ambiguous as to the term "Second Repayment
17 Agreement," which is an unknown term to Claimant.

18
19 **REQUEST FOR ADMISSION NO. 56:**

20 On or around August 21, 2008, the Claimant sent a personal check to GMACM in
21 the amount of \$6,000.00(the "August 2008 check").

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 56:**

23 Admit that Claimant did send a check, in the approximate amount of \$6,000, at
24 some time around August 2008. In all other respects, denied.

25

26

1 **REQUEST FOR ADMISSION NO. 57:**

2 The August 2008 check was returned to the Claimant on or around August 25,
3 2008.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 57:**

5 Subject to and without waiving its objections, this RFA is Denied on the basis that,
6 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
7 sufficient information to be able to admit or deny this RFA.

8
9 **REQUEST FOR ADMISSION NO. 58:**

10 The Claimant did not make any payments on the Mortgage Loan to GMACM after
11 the August 2008 check was returned.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 58:**

13 Subject to and without waiving its objections, this RFA is Denied on the basis that,
14 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
15 sufficient information to be able to admit or deny this RFA. Further objection on the basis
16 that this RFA assumes facts not in evidence as Claimant is not aware of, nor has admitted
17 to receiving any such check.

18
19 **REQUEST FOR ADMISSION NO. 59:**

20 The Claimant was aware of the foreclosure sale that occurred on May 7, 2009
21 prior to the date of the sale.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 59:**

23 Objection. This RFA is vague and ambiguous as to the term "aware of" and also
24 as to time requirement necessitated by this RFA. Admit that at some point in time
25 Claimant was informed that a sale had occurred.

26

1 **REQUEST FOR ADMISSION NO. 60:**

2 On September 8, 2012, a Notice of Rescission of the Trustee's Deed Upon Sale
3 was recorded(the "Rescission").

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 60:**

5 Objection. This RFA is vague as to time and no such imputation is admitted to that
6 Claimant was informed of this document at the date stated or for months afterward. On
7 that basis, denied. However, it is admitted that such a document with that title was
8 recorded on that date, but only because it can be located on a publicly accessible website.

9
10 **REQUEST FOR ADMISSION NO. 61:**

11 The Claimant is currently in default under the terms of the Note.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 61:**

13 Denied.

14
15 **REQUEST FOR ADMISSION NO. 62:**

16 The Claimant is currently in default under the terms of the Mortgage Loan.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 62:**

18 Denied.

19
20 **REQUEST FOR ADMISSION NO. 63:**

21 A foreclosure has not been completed on the Property since the Rescission on
22 September 8, 2012.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 63:**

24 Objection. Vague and ambiguous as to the term "completed." Claimant does not
25 know what that means in the context of California law.

26

1 **REQUEST FOR ADMISSION NO. 64:**

2 The Claimant still resides in the Property.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 64:**

4 Admit.

5
6 **REQUEST FOR ADMISSION NO. 65:**

7 The Claimant continues to hold title to the Property, subject to the Note and the
8 Deed of Trust.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 65:**

10 Admit.

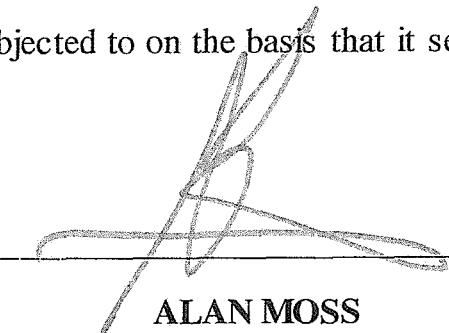
11
12 **REQUEST FOR ADMISSION NO. 66:**

13 The Claimant entered into a settlement agreement with the Bank of New York
14 Trust Company and Ocwen Loan Servicing, LLC to resolve litigation that you filed against
15 Bank of New York Trust Company.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 66:**

17 This Request For Admission is objected to on the basis that it seeks confidential
18 information.

19
20 DATED: January 10, 2017


ALAN MOSS

Attorney In Pro Per

PROOF OF SERVICE

**COURT: UNITED STATES BANKRUPTCY COURT IN AND FOR THE
SOUTHERN DISTRICT OF NEW YORK**

CASE NAME: *IN RE RESCAP, LLC ET AL.*

ACTION NO.: ACTION No. 12-12020

I am employed in the County of San Francisco, California. I am over the age of 18 and not a party to the within action. On this date, I served the foregoing document(s) described as:

**CLAIMANT'S AMENDED RESPONSES TO REQUEST FOR ADMISSIONS
PROPOUNDED BY DEBTOR RESCAP**

on the party(ies) set out in said document by causing a true copy thereof to be:

- ☐ Delivered via e-mail to the e-mail address set forth below next to the recipient's name.
- ☐ By U.S. mail, by placing said document(s) in a sealed envelope with first class postage thereon fully prepaid, and then placed in the designated office area for outgoing mail.
- ☐ By U.S. mail, Return Receipt Requested, by placing said document(s) in a sealed envelope with appropriate postage thereon fully prepaid and then placed in the designated office area for outgoing mail.
- ☐ Delivered by hand to the person or person's office set forth below, or by handing said document in a sealed envelope to a messenger service for delivery as addressed.
- ☐ Sent via Priority overnight mailing, by handing said document in a sealed envelope to an agent for the USPS for overnight delivery.

and if mailed, addressed as follows and sent to the following address(es):

Jessica Arett, Esq.(j.aret@mofo.com)
MORRISON & FOERSTER
250 West 55th Street
New York NY 10019

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

Executed this 20 nd day of January, 2017, at San Francisco, California.