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9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE SOUTHERN DISTRICT OF NEW YORK
11 MANHATTAN DIVISION

12) **BANKRUPTCY CASE No. 12-12020-MG**
13) **USDC CASE No.: 15-CV-7140**
14) [Jointly Administered (Executive Trustee
15) Services, Case No. 12-12028)]
16) **APPELLANT'S DESIGNATION OF**
17) **CONTENTS OF RECORD ON APPEAL**
18) **AND**
19) **STATEMENT OF ISSUES**
20) **CLAIM NO. 4445**
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11 *IN RE:*
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14 RESIDENTIAL CAPITAL, LLC, *ET AL.*
15
16 DEBTORS.)

19 **COMES NOW** Appellant ALAN MOSS, and pursuant to Fed.R.Rank.P
20 8009, submits his Designation of Contents of the Record on Appeal, and Statement Of
21 Issues to be presented.

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APPELLANT'S DESIGNATION OF CONTENTS OF
RECORD ON APPEAL AND STATEMENT OF
ISSUES



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I.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL:

<u>DESIGNATION NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>
ECF Doc. No. 7552	SEPT. 17, 2014	RESCAP BORROWER CLAIMS TRUST'S (HEREINAFTER "RESCAP") SEVENTY-FIFTH OBJECTION TO CLAIM NO. 4445
ECF Doc. No. 7667	OCT. 16, 2014	CLAIMANT'S RESPONSE IN OPPOSITION TO RESCAP'S <i>SEVENTY-FIFTH</i> OMNIBUS OBJECTION TO CLAIM NO. 4445
ECF Doc. No. 7904	DEC. 19, 2014	RESCAP'S SUPPLEMENTAL OBJECTION TO CLAIM NO. 4445
ECF Doc. No. 8044	JAN. 23, 2015	CLAIMANT'S RESPONSE TO RESCAP'S SUPPLEMENTAL OBJECTION TO CLAIM NO. 4445
ECF Doc. No. 8073	FEB. 5, 2015	RESCAP'S REPLY IN SUPPORT OF ITS SUPPLEMENTAL OBJECTION TO CLAIM NO. 4445
ECF Doc. No. 8293	FEB. 12, 2015	TRANSCRIPT OF HEARING
ECF Doc. No. 8127	FEB. 13, 2015	ORDER SUSTAINING OBJECTION TO CLAIM AND LEAVE TO AMEND
ECF Doc. No. 8225	MARCH 2, 2015	MOTION TO REARGUE
ECF Doc. No. 8334	MARCH 16, 2015	AMENDED CLAIM NO. 4445
ECF Doc. No. 8439	APRIL 7, 2015	ORDER DENYING MOTION OF ALAN MOSS FOR REARGUMENT
ECF Doc. No. 8502	APRIL 15, 2015	RESCAP OBJECTION TO AMENDED CLAIM NO. 4445
ECF Doc. No. 8727	MAY 20, 2015	CLAIMANT'S RESPONSE TO RESCAP'S OBJECTION TO AMENDED CLAIM
ECF Doc. No. 8766	JUNE 18, 2015	RESCAP'S REPLY IN SUPPORT OF ITS OPPOSITION TO AMENDED CLAIM NO. 4445

APPELLANT'S DESIGNATION OF CONTENTS OF
RECORD ON APPEAL AND STATEMENT OF
ISSUES

1	ECF Doc. No. 8813	JUNE 28, 2015	CLAIMANT'S LETTER DATED JUNE 23, 2015 TO JUDGE GLENN RE: CASE CITATION
2			
3	ECF Doc. No. 9052	AUG. 24, 2015	MEMORANDUM OPINION AND ORDER SUSTAINING THE RESCAP BORROWER CLAIMS TRUST'S OBJECTION TO AMENDED CLAIM NO. 4445 FILED BY ALAN MOSS
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6	ECF Doc. No. 9116	SEPT. 4, 2015	NOTICE OF APPEAL AND STATEMENT OF ELECTION
7	ECF Doc. No. 16	JUNE 2, 2016	OPINION AND ORDER REVERSING AND REMANDING ECF Doc. No. 9052
8	USDC(SDNY): CIV-15-7140		
9	ECF Doc. No. 10273	DECEMBER 27, 2016	LETTER FROM COUNSEL FOR RESCAP
10			
11	ECF Doc. No. 10284	JANUARY 11, 2017	ORDER PERMITTING PARTIES TO FILE A MOTION FOR SUMMARY JUDGMENT
12	ECF Doc. No. 10386	MAY 10, 2017	TRANSCRIPT OF HEARING ON MOTION FOR SUMMARY JUDGMENT
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14	ECF Doc. No. 10356	APRIL 12, 2017	PRE-TRIAL ORDER(PROPOSED)
15	ECF Doc. No. 10362	APRIL 19, 2017	PRE-TRIAL ORDER
16	ECF Doc. No. 10372	APRIL 25, 2017	CLAIMANT'S PRE-TRIAL MEMORANDUM OF LAW
17	ECF Doc. No.	MAY 8, 2017	TRANSCRIPT OF TRIAL
18	ECF Doc. No. 10390	MAY 16, 2017	MEMORANDUM OPINION AND ORDER SUSTAINING THE RESCAP BORROWER CLAIMS TRUST'S OBJECTION TO CLAIM NO. 8334[STET]
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II.

IDENTIFY THE SUBJECT OF THIS APPEAL:

This claim arises from, and is based upon, a law suit between claimant ALAN MOSS and a sub-entity of ResCap named Executive Trustee Services(hereinafter "ETS").

1 The lawsuit was filed in the Superior Court in and for the County of San Mateo,
2 California.¹ The lawsuit accuses ETS of illegally acting as the “trustee” in a foreclosure
3 action, the role of “trustee” being a requisite part of the foreclosure process in California,
4 that ETS had no power to issue the two statutorily required notices issued by ETS as
5 trustee, and therefore were of no force and effect. Both ResCap and the Court agree that
6 ETS was illegally appointed as trustee. In a separate lawsuit, Claimant herein sued
7 ResCap for wrongful foreclosure, based in large part on the illegal actions of ETS. That
8 lawsuit was resolved by way of settlement, and the illegally issued notices were
9 withdrawn. When ResCap filed for bankruptcy, ETS did as well; it did so as a separate
10 bankruptcy case, but was and is jointly administered with this ResCap litigation.

11 With this background, the issues to be addressed in this appeal are as
12 follows:

13 A. Whether the Bankruptcy Court correctly concluded that ETS was not
14 negligent;

15 B. Whether the Bankruptcy Court correctly concluded that ETS did not act
16 with malice;

17 C. Whether the Bankruptcy Court correctly concluded that ETS did not
18 commit fraud;

19 D. Whether the Bankruptcy Court correctly concluded that ETS did not
20 commit Intentional Infliction Of emotional Distress;

21 E. Whether the Bankruptcy Court correctly concluded that Claimant did not
22 suffer damages;

23 F. Whether the Bankruptcy Court correctly overruled Claimant’s objection

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25 ¹ See San Mateo Superior Court Action No. CV505386.

1 to the admission of evidence proffered by ResCap, and incorrectly sustained the objection
2 of ResCap to evidence proffered by Claimant;

3 G. Whether the Bankruptcy Court erred in not complying with the
4 directions of the District Court in its Order reversing and remanding the Bankruptcy
5 Court's Order of August 24, 2015; and

6 H. Whether the Bankruptcy Court erred in placing the burden on Claimant
7 at the trial of this matter, in contravention of the rules applicable to bankruptcy
8 proceedings.

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10 Respectfully submitted,

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12 Dated: **June 7, 2017**

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ALAN MOSS

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16 *In Propria Personum*
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PROOF OF SERVICE

COURT: U.S. BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CASE NAME: *IN RE RESCAP*

ACTION NO.: BANKRUPTCY NO. 12-12020-MG

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:

APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL AND STATEMENT OF ISSUES

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

- ☐ By U.S. priority OVERNIGHT mail, by placing said document(s) in a sealed envelope with first class postage thereon fully prepaid, and then deposited in a U.S. Post Office.
- ☐ 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.
- ☒ Sent via Fedex Priority overnight mailing, by handing said document in a sealed envelope to an agent for the USPS or FEDEX for overnight delivery.

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

Clerk's Office(Appeals Section)
U.S. Bankruptcy Court in and for the
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York New York 10004-1408

Morrison and Foerster LLP
ATTN: Norman S. Rosenbaum
250 West 55th Street
New York New York 10019

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

Executed this 7th day of June, 2017, at San Francisco, California.

APPELLANT'S DESIGNATION OF CONTENTS OF
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BANKRUPTCY ACTION NO. 12-12020-MG