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Agency, as Conservator for the Federal  
Home Loan Mortgage Corporation*

**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 ANDREW K. GLENN IN SUPPORT OF  
OBJECTION OF THE FEDERAL HOUSING FINANCE AGENCY  
TO CONFIRMATION OF THE JOINT CHAPTER 11 PLAN  
PROPOSED BY RESIDENTIAL CAPITAL, LLC, *et al.* AND  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Andrew K. Glenn, an attorney duly admitted to the practice of law, declares under the penalty of perjury, that the following is true to the best of my knowledge:

1. I am an attorney at law admitted to practice in the State of New York and am a member of the law firm of Kasowitz, Benson, Torres & Friedman LLP (“KBT&F”), whose principal office is located at 1633 Broadway, New York, New York 10019. KBT&F is counsel for Federal Housing Finance Agency (“FHFA”) as Conservator for the Federal Home Loan Mortgage Corporation in the above-captioned chapter 11 cases.



2. I respectfully submit this Declaration in support of the *Objection of the Federal Housing Finance Agency to Confirmation of the Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* (the “Objection”).

Capitalized terms used in this Declaration and not otherwise defined shall have the meanings ascribed to them in the Objection.

3. FHFA, in its capacity as Conservator of Freddie Mac, commenced an action in the Supreme Court of the State of New York, County of New York, on September 2, 2011. That complaint (the “Complaint”) named as defendants: (1) Ally Financial, Inc. (“AFI”), GMAC Mortgage Group, Inc. (“GMACM”), and Ally Securities, LLC (“Ally Securities”); (2) Residential Capital, LLC (“ResCap”), GMAC-RFC Holding Company LLC (“GMAC-RFC Holding”), Residential Funding Company, LLC (“RFC”), Residential Asset Mortgage Products, Inc. (“RAMP”), Residential Asset Securities Corporation (“RASC”), and Residential Accredited Loans, Inc. (“RALI”) (collectively, the “ResCap Defendants”); and (3) seven underwriters (collectively, the “Underwriter Defendants”). The Complaint generally alleged that, between September 23, 2005 and May 30, 2007, Freddie Mac purchased over \$6 billion in residential mortgage backed securities (the “Certificates”) issued in connection with 21 securitizations (“Securitizations”) for which the ResCap Defendants acted as depositors, sponsor, and control persons thereof.

4. On October 6, 2011, all defendants removed the action to the United States District Court for the Southern District of New York (the “District Court”), where it was assigned to the Honorable Denise L. Cote, U.S.D.J., as Case No. 11- Civ. 7010 (the “Ally Action”). Judge Cote thereafter entered an order coordinating for pretrial proceedings the Ally Action with 15 similar actions commenced by FHFA against other defendants regarding other


residential mortgage backed securities.

5. On June 13, 2012, FHFA amended its Complaint in the Ally Action (the “Amended Complaint”). Because of the Debtors’ bankruptcy filing, FHFA’s Amended Complaint removed all Debtors from the Ally Action, but continued to assert claims against AFI, GMACM and Ally Securities and the Underwriter Defendants (collectively, the “Non-Debtor Defendants”). Otherwise, the Amended Complaint makes the same substantive allegations as the original Complaint.

6. FHFA’s Amended Complaint asserts seven claims against the Non-Debtor Defendants. FHFA asserts four claims against Ally Securities and the Underwriter Defendants in their roles as underwriters of the Certificates: (i) violations of section 11 of the Securities Act of 1933; (ii) violations of section 12(a)(2) of the Securities Act; (iii) violations of section 13.1-522(A)(ii) of the Virginia Securities Act; and (iv) common law fraud. FHFA also asserts three claims against AFI and GMACM: (i) violations of section 15 of the Securities Act; (ii) violations of section 13.1-522(C) of the Virginia Securities Act; and (iii) aiding and abetting the fraud.

7. Attached hereto as Exhibit A are true and correct copies of the pages of the Disclosure Statement Hearing transcript which are cited in the Objection.

Executed on the 22nd day of October, 2013.



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Andrew K. Glenn

**EXHIBIT A**

**In Re:**

*RESIDENTIAL CAPITAL, LLC, et al.,  
Case No. 12-12020-mg*

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*August 21, 2013*

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## RESIDENTIAL CAPITAL, LLC, ET AL.

1 great.

2           And so this is the marked version of the plan. And  
3 Your Honor, on pages 9 through 15 of the marked plan, it sets  
4 out the expected recoveries or projected recoveries in the  
5 disclosure statement; and the recoveries for unsecured  
6 creditors will vary depending upon whether their claims are  
7 against the ResCap debtors, where the estimate is 31.5 to 41.9  
8 percent; the GMACM debtors, where it's currently 26 to 34.7  
9 percent; and the RFC debtors, where we're at 7.8 to 10.3  
10 percent.

11           The plan will establish various trusts to effectuate  
12 the distribution. So we've got the main liquidating trust that  
13 will liquidated the debtors' remaining assets, make  
14 distributions to creditors in the form of trust units which  
15 will be followed up by cash distributions to the units. And  
16 the liquidating trust makes those distributions to creditors  
17 other than borrowers, the New Jersey Carpenters claims class,  
18 and in some fashion to the members of the private securities  
19 claims class.

20           And so the borrowers will have distributions in the  
21 form of an actual cash distribution into a borrower trust,  
22 which initially will be funded with an amount up to 57.6  
23 million dollars. And there's a true-up concept with respect to  
24 that trust, that as we get closer to the effective date of the  
25 plan, and we file our plan supplement, we'll have a better

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1 confirmation issue. And let me ask -- the first question is:  
2 am I correct that if at the time of confirmation the Court  
3 concludes that the best interests test is not satisfied as to  
4 any defined class of creditors, that the plan provides that the  
5 distribution to that class can be increased? Is that -- I  
6 thought I read that in a lot of the paper I read about the  
7 disclosure statement.

8           Here's the reason I'm asking the question. Mr.  
9 Marinuzzi raised -- he talked about the three, and now you've  
10 added ETS as a separate bucket. The plan and the disclosure  
11 statement describes that the FHFA claim is included as a class  
12 in the RFC bucket, and says that they'd get three percent. The  
13 plan projects -- Mr. Marinuzzi pointed to this in the black-  
14 line at pages 14 and 15 -- the distribution to RFC of 7.8 to  
15 unsecured creditors of RFC -- 7.8 to 10.3 percent. The plan  
16 provides for three percent to FHFA.

17           I don't know in a liquidation analysis what, if  
18 anything -- and I know the plan reserves the right to argue  
19 that their claim is subordinated -- but I guess somebody's got  
20 to make me understand how FHFA -- and I understand they're not  
21 signing on to the release of AFI -- how that in itself  
22 justifies their getting the smaller distribution from the  
23 debtors' estate.

24           MR. ECKSTEIN: Your Honor, that -- it's an important  
25 question. It's one that we've given a fair amount of thought



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1 to. And you're right to point out that the separate treatment  
2 of the FHFA, which in fact now, as Your Honor will hear, is two  
3 percent rather than three percent -- but it's designed to match  
4 what the FHFA would be entitled to in a liquidation. And it  
5 contemplates a liquidation would not include the AFI  
6 settlement. It would be a Chapter 7 liquidation.

7 THE COURT: So does that mean, in fact, that you're  
8 valuing the release to AFI at somewhere between five and eight  
9 cents?

10 MR. ECKSTEIN: The concept, Your Honor, is that the  
11 proposed treatment to the FHFA would give them what would be  
12 available to them as a creditor of RFC in the absence of a  
13 settlement -- in the absence of the global settlement. And  
14 they would obviously retain their claims against AFI, which  
15 they could pursue for whatever recovery they can obtain in  
16 litigation or a settlement.

17 And the intent is to comply with the best interests  
18 requirements in the Bankruptcy Code. To the extent Your Honor  
19 is not comfortable that it satisfies the best interests  
20 standard, the plan can be modified to accommodate that. But I  
21 think the contemplation is that this is designed to be  
22 consistent with the best interest test.

23 THE COURT: It looks to me that you're valuing the  
24 release to AFI at somewhere between six and nine cents. We'll  
25 come to -- because when we get to the third-party releases,

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1 that's one of the questions I have is what's the -- and I'm not  
2 saying you have to for the disclosure statement ascribe a value  
3 to the release. But this was the closest that I came to seeing  
4 something that actually put a value on it. You're saying if --  
5 I thought it was three percent, and now you're telling me it's  
6 changed to two percent -- if FHFA doesn't sign on to the plan  
7 and agree to release AFI, they get 2 cents, and if they do sign  
8 on, they stand to get 7.8 to 10.3 cents.

9 MR. ECKSTEIN: That's essentially right, Your Honor.

10 THE COURT: And that seems to me to be putting a value  
11 on the release.

12 MR. ECKSTEIN: Your Honor, if you would compare what's  
13 available to RFC creditors without the AFI settlement, I think  
14 you would end up with a number like two cents.

15 THE COURT: Well --

16 MR. ECKSTEIN: We can walk through that. But that's  
17 essentially --

18 THE COURT: I just want you to know, I've got  
19 questions. And this may not be a question for today. This may  
20 be -- but look -- and I know Mr. Marinuzzi or you wanted to  
21 talk about the standards for a disclosure statement. I'm  
22 pretty quite familiar with the standards for a disclosure  
23 statement. And a lot of the responses were, oh, it's a  
24 confirmation issue, it's a confirmation issue.

25 And that's all well and good, but if there are

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1 there's a lot in here, and I've read it a bunch of times, but  
2 maybe you'll point me to it. This comes back a little bit to  
3 when I talked about the FHFA, how much value -- I don't see  
4 anything in here that's attributing value to the release. AFI,  
5 yes, it's contributing 2.1 billion. There's a discussion of  
6 well, these claims have been identified. The proponents may  
7 disagree as to some of the things that the examiner identified.  
8 Okay. But I haven't seen anything that attempts to place a  
9 value on the release that AFI will receive.

10 MR. MARINUZZI: Your Honor, I think the point -- a  
11 couple points. One, there were some objections that asked us  
12 to allocate as between --

13 THE COURT: I agree you don't have to allocate.

14 MR. MARINUZZI: We can't do that.

15 THE COURT: That I agree with.

16 MR. MARINUZZI: We can't do that.

17 THE COURT: I agree.

18 MR. MARINUZZI: And if you look at Exhibit 10 to the  
19 disclosure statement --

20 THE COURT: Yes.

21 MR. MARINUZZI: -- what we've tried to do here is lay  
22 out fairly the positions of the JSN and positions of AFI with  
23 respect to the examiner's conclusion on the liability that AFI  
24 would have otherwise had to the estate, basically, in the  
25 absence of a settlement. I think there's a fair amount of