

POLSINELLI  
Daniel J. Flanigan, Esq.  
Jason A. Nagi, Esq.  
900 Third Avenue, 21st Floor  
New York, New York 10022  
(212) 684-0199 (Telephone)  
(212) 759-8290 (Facsimile)

*Counsel for the ResCap Borrower Claims Trust*

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

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

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**THE RESCAP BORROWER CLAIMS TRUST'S  
OBJECTION TO ANDREW R. SHADDOCK'S  
MOTION TO ACCEPT PROOF OF CLAIM LATE AND HEREWITH**



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The ResCap Borrower Claims Trust (the “Borrower Trust”), established pursuant to the terms of the Chapter 11 Plan<sup>1</sup> confirmed in the above-captioned bankruptcy cases (the “Chapter 11 Cases”), as successor in interest to the above-captioned debtors (collectively, the “Debtors”) with respect to Borrower Claims (defined below), hereby submits this objection (the “Objection”) to the *Motion to Accept Proof of Claim Late and Herewith* [Docket No. 10679] (the “Motion”) filed by Andrew R. Shaddock (the “Movant”). In support of the Objection, the Borrower Trust submits the declaration of Jill Horner, Chief Finance Executive at Residential Capital, LLC (the “Jill Horner Declaration”), annexed hereto as Exhibit 1, and the Affidavit of Service of Lydia Do, of Kurtzman Carson Consultants LLC, the claims and noticing agent retained by the Debtors (the “Do Affidavit”), annexed hereto as Exhibit 2. In further support of the Objection, the Borrower Trust respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. The Motion should be denied because the Movant has failed to demonstrate that the Debtors did not provide Movant with sufficient notice of the Bar Date (defined below). Service of the notice of the claims Bar Date on the Movant at the Movant’s Address (defined below) was proper service, and subsequent notice in 2014 to Movant’s counsel that Movant failed to timely file a claim makes clear that Movant has had longstanding knowledge of his failure to timely file a claim. Accordingly, the Movant cannot satisfy the standards for excusable neglect applicable in this District so as to permit the Movant to file an untimely proof of claim.

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<sup>1</sup> Terms defined in this paragraph and the Preliminary Statement shall have the meanings ascribed to such terms in the Objection.

## **BACKGROUND**

### **I. GENERAL BACKGROUND**

2. On December 11, 2013, the Court entered an *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the “Confirmation Order”) approving the terms of the Chapter 11 plan, as amended (the “Plan”), filed in these Chapter 11 Cases [Docket No. 6065]. On December 17, 2013, the Effective Date (as defined in the Plan) of the Plan occurred, and, among other things, the Borrower Trust and the ResCap Liquidating Trust were established [Docket No. 6137].<sup>2</sup>

3. The Plan provides for the creation and implementation of the Borrower Trust, which is established for the benefit of Borrowers who filed Borrower Claims (as such terms are defined in the Plan) to the extent such claims are ultimately allowed either through settlement or pursuant to an order of the Court. See Plan, Art. IV.F. The Borrower Trust was established to, among other things, “(i) direct the processing, liquidation and payment of the Allowed Borrower Claims in accordance with the Plan, and the distribution procedures established under the Borrower Claims Trust Agreement, and (ii) preserve, hold, and manage the assets of the Borrower Claims Trust for use in satisfying the Allowed Borrower Claims.” See id.

### **II. ENTRY OF THE BAR DATE ORDER, RELATED NOTICE OF THE BAR DATE, AND SUBSEQUENT NOTICE TO MOVANT**

4. The Movant’s Address, as reflected in the Debtors’ records at the time of the Petition Date, is: 1106 Main St., Holyoke, MA 01040.<sup>3</sup>

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<sup>2</sup> The ResCap Liquidating Trust and the Borrower Trust are parties to an Access and Cooperation Agreement, dated 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.

<sup>3</sup> Debtors’ records identify the Property Address as being located at 45 Middlesex Street, Springfield, MA 01109; however, the same records identify 1106 Main St., Holyoke, MA 01040 as the Mailing Address for Movant. Jill Horner Declaration, ¶5.

5. On August 29, 2012, this Court entered the *Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 1309] (the “Bar Date Order”), establishing November 9, 2012 as the general claims bar date (the “Bar Date”).<sup>4</sup>

6. Attached to the Bar Date Order is a form of notice regarding the Bar Date (the “Bar Date Notice”). The Bar Date Notice states that, subject to certain exceptions not applicable here “You **MUST** file a proof of claim to vote on a Chapter 11 plan filed by the Debtors or to share in distributions from the Debtors’ bankruptcy estates if you have a claim that arose before the filing of the Debtors’ Chapter 11 petitions on the Petition Date . . . even if such claims are not now fixed, liquidated or certain or did not mature or become fixed, liquidated or certain before the Petition Date.” Bar Date Notice ¶ 1. In addition, the Bar Date Notice states that, with respect to holders of claims listed on the Debtors’ Schedules:

If you agree with the nature, amount and status of your claim as listed on the Debtors’ Schedules, and if you do not dispute that your claim is against only the specified Debtor, and if your claim is not described as “disputed,” “contingent,” or unliquidated,” you need not file a proof of claim. Otherwise, or if you decide to file a proof of claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this Notice.

Bar Date Notice ¶ 7. The Bar Date Notice further states:

**ANY HOLDER OF A CLAIM THAT IS NOT EXCEPTED FROM THE REQUIREMENTS OF THE BAR DATE ORDER, AS DESCRIBED IN SECTION 4 ABOVE, AND THAT FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM WILL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS, THEIR SUCCESSORS, THEIR CHAPTER 11 ESTATES AND THEIR RESPECTIVE PROPERTY OR FILING A PROOF OF CLAIM WITH RESPECT TO SUCH CLAIM, FROM VOTING ON ANY PLAN OF REORGANIZATION FILED IN THESE CASES AND FROM PARTICIPATING IN ANY DISTRIBUTION IN THE**

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<sup>4</sup> The Court subsequently entered an *Order Extending Deadline for Filing Proofs of Claim* [Docket No. 2093], extending the Bar Date to November 16, 2012.

**DEBTORS' CASES ON ACCOUNT OF SUCH CLAIM OR RECEIVING  
FURTHER NOTICES REGARDING SUCH CLAIM.**

Bar Date Notice ¶ 6.

7. In accordance with the Bar Date Order, on or before October 5, 2012, Kurtzman Carson Consultants, LLC (“KCC”), the Debtors’ claims and noticing agent, served a copy of the Bar Date Notice on the Movant directly to him by serving such notice via First Class Mail at Movant’s Mailing Address contained in Debtors’ files.<sup>5</sup> See *Do Affidavit* ¶ A.

8. Thereafter, in September 2014, Movant filed suit against GMAC Mortgage, LLC and GMAC Bank before the Superior Court of Massachusetts (“Movant’s Lawsuit”), which is the underlying claim for which Movant seeks leave to file an untimely Proof of Claim. [Docket No. 10679 at pp. 1, 7-16]. In Movant’s Lawsuit, Movant was represented by counsel, Steven R. Weiner, whose mailing address was 930 Main Street, Springfield, MA 01103. [Docket No. 10679 at p. 10]

9. As part of Movant’s Lawsuit, counsel for GMAC Mortgage, LLC filed *GMAC Mortgage, LLC’s Notice of Bankruptcy Status* (“Notice of Bankruptcy Status”). [Docket No. 10679 at pp. 2-6]. The Notice of Bankruptcy Status was served on Movant’s attorney, Steven R. Weiner, via First Class U.S. Mail, on October 14, 2014. [Docket No. 10679 at p. 6]

10. The Notice of Bankruptcy Status informed Movant, *inter alia*, of the following:

Article VIII.B of the Plan provides that the claim of any creditor of the Debtors that failed to file a proof of claim by the applicable deadline “SHALL BE DEEMED DISALLOWED, DISCHARGED, RELEASED, AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO

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<sup>5</sup> The Bar Date Notice was also published in the national edition of the *Wall Street Journal* and the national edition of *USA Today*, which noticed potential claimants that proofs of claim against the Debtors must be received on or before the Bar Date. See Bar Date Notice ¶¶ 1, 3; see also Amended Affidavit of Publication re: Notice of Deadlines for Filing Proofs of Claim in the *Wall Street Journal* and *USA Today* [Docket No. 1660]. In addition, a copy of the Bar Date Order and other information regarding the filing of a proof of claim was made publicly available at <http://www.kccllc.net/rescap>.



OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A FINAL ORDER OF THE BANKRUPTCY COURT.”

[Docket No. 10679 at p. 4, ¶4].

11. Further, the Notice of Bankruptcy Status informed Movant of the following:

According to the Debtors’ records, Plaintiff did not file a proof of claim in the Bankruptcy Cases and is barred from continuing to prosecute this action against GMACM. ...

[Docket No. 10679 at p. 5, ¶6].

12. For more than seven years after receiving notice of the Bar Date and for more than five years after receiving the Notice of Bankruptcy Status, on or about December 19, 2019, Movant mailed the instant motion to the Court, seeking permission to file an untimely proof of claim in the Chapter 11 Cases.

## **ARGUMENT**

### **I. SERVICE OF THE BAR DATE NOTICE WAS SUFFICIENT**

13. Courts in this circuit support the view that “[a] rebuttable presumption that an addressee received a mailed notice arises when the mailing party submits sufficient evidence to demonstrate the notice was properly addressed and mailed.” See In re WorldCom, Inc., No. 02-13533, 2005 WL 3875192, at \*3 (Bankr. S.D.N.Y. Oct. 27, 2005) (Gonzalez, J.) (finding that a claimant received notice of a bar date based on evidence demonstrating that notice was properly addressed and mailed); see also Hagner v. U.S., 285 U.S. 427, 430 (1932) (“The rule is well settled that proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed.”). See, e.g., In re Alexander’s Inc., 176 B.R. 715, 721 (Bankr. S.D.N.Y. 1995) (it is “black letter law” that properly mailed bar date notice presumed

to be received); Riverhead Transit Mix Corp. v. Walsh Const. Co. (In re Riverhead Transit Mix Corp.), No. 091-7142-511, 1995 WL 1051649, at \*11 (Bankr. S.D.N.Y. June 29, 1995) (“affidavit of service is sufficient evidence to raise a presumption of receipt by the party served”); Memorandum Opinion and Order Denying Motion to Lift the Automatic Stay and Permit a Late-Filed Claim of Jorge Cerron, In re Residential Capital, LLC, et al., No. 12-12020 (MG), Docket No. 7333 at 21 (Bankr. S.D.N.Y. July 31, 2014) (finding that claimant’s “bald denial of receipt, without more, is legally insufficient to overcome the presumption of receipt.”); Order Denying Request for Late-Filed Proof of Claim of Donna Chinloy, In re Residential Capital, LLC, et al., No. 12-12020 (MG), Docket No. 3973 at 4 (Bankr. S.D.N.Y. June 13, 2013) (determining that KCC affidavits give rise to presumption that claimant received the Bar Date Notice and notice of the commencement of the case, and claimant has not rebutted this presumption); Memorandum Opinion and Order Denying Motion to Allow Late Filed Claim of Michael Dockery, In re Residential Capital, LLC, et al., No. 12-12020 (MG), Docket No. 8076 at 10-11 (Bankr. S.D.N.Y. February 6, 2015) (presumption that claimant received Bar Date Notice raised by affidavit of person who supervised or carried out mailing).

14. The Bar Date Notice was duly served upon the Movant personally by mailing to Movant’s Address. The Bar Date Notice was never returned as undeliverable. See Do Affidavit ¶ A. Thus, the Bar Date Notice is presumed to have been received.

15. In the instant motion, Movant makes the unsupported assertion that he never received any notice concerning the bankruptcy, contending that:

he had not received notice of the Bankruptcy of the debtor except through local counsel’s receipt of the attached Exhibit “A”, the Notice of Bankruptcy.

[Docket No. 10679 at p. 1] (emphasis added). This single sentence is the sole basis provided by Movant as justification for his motion and request for permission to file his claim late. [See *id.*].

16. Movant's unsupported assertion, without more, regarding the lack of notice is legally insufficient to rebut the presumption that he did in fact receive the Bar Date Notice. Memorandum Opinion and Order Denying Motion to Lift the Automatic Stay and Permit a Late-Filed Claim of Jorge Cerron, In re Residential Capital, LLC, et al., No. 12-12020 (MG), Docket No. 7333 at 21 (Bankr. S.D.N.Y. July 31, 2014) (finding that claimant's "bald denial of receipt, without more, is legally insufficient to overcome the presumption of receipt.").

17. Thus, the Borrower Trust submits the presumption that Movant timely received the Bar Date Notice has not been, and cannot be, rebutted. The Debtors properly and timely notified the Movant of the commencement of these Chapter 11 Cases, and properly and timely notified the Movant of the Bar Date by mailing the Bar Date Notice to the Movant at the address reflected in the Debtors' records, as demonstrated by the Do Affidavit. Accordingly, the Debtors satisfied due process requirements and the requirements of the Bankruptcy Code and Bankruptcy Rules.

## **II. MOVANT HAS FAILED TO DEMONSTRATE EXCUSABLE NEGLIGENCE**

18. The Supreme Court considered the test for determining whether a creditor may be permitted to file a late proof of claim in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993). In Pioneer,<sup>6</sup> the Court explained that Congress, in empowering "the courts to accept late filings 'where the failure to act was the result of excusable neglect,' Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake or carelessness, as well as by intervening circumstances beyond the party's control." Id. at 388 (citations omitted). The Court explained that "the determination [regarding whether a failure to act constitutes excusable neglect] is at

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<sup>6</sup> Unless otherwise specified, references to Pioneer are to the Supreme Court's decision.

bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission," including (i) "the reason for the delay, including whether it was within the reasonable control of the movant," (ii) "the danger of prejudice to the debtor," (iii) "whether the movant acted in good faith," and (iv) "the length of delay and its potential impact on judicial proceedings." Id. at 395.

19. The Second Circuit takes a "hard line" approach in applying the Pioneer test. Midland Cogeneration Venture Ltd. P'ship v. Enron (In re Enron Corp.), 419 F.3d 115, 122 (2d Cir. 2005); see also In re BGI, Inc., 476 B.R. 812, 824 (Bankr. S.D.N.Y. 2012) (Glenn, J.). The Second Circuit has observed that three of the Pioneer factors typically will weigh in favor of the movant – the length of the delay, the danger of prejudice, and the movant's good faith. In re Enron Corp., 419 F.3d at 122; see also In re BH S & B Holdings LLC, 435 B.R. 153, 168 (Bankr. S.D.N.Y. 2010) (Glenn, J.). As a result, the Second Circuit has focused on the factor related to "the reason for the delay, including whether it was within the reasonable control of the movant." In re Enron Corp., 419 F.3d at 122 (internal quotations omitted). Importantly, the Second Circuit noted "that the equities will rarely if ever favor a party who fail[s] to follow the clear dictates of a court rule," and "that where the rule is entirely clear, we continue to expect that a party claiming excusable neglect will, in the ordinary course, lose under the Pioneer test." Id. at 123 (internal quotations omitted). Instead, "[O]nly in unusual instances would inadvertence, ignorance of the rules, or mistakes construing the rules . . . constitute excusable neglect." In re BH S & B Holdings LLC, 435 B.R. at 168 (quoting In re Nw. Airlines Corp., No. 05-17930 (ALG), 2007 WL 498285, at \*3 (Bankr. S.D.N.Y. Feb. 9, 2007) (internal quotations omitted)).

20. Here, the Movant has failed to meet his burden of demonstrating excusable neglect. See In re PT-1 Commc'ns, Inc., 403 B.R. 250, 260 (Bankr. E.D.N.Y. 2009) (concluding that late filer bears burden of demonstrating excusable neglect); see also In re BH S & B Holdings LLC, 435 B.R. at 168 (burden of showing excusable neglect is on the movant). The Movant's failure to "follow the clear dictates of a court rule" and provide any reasonable justification or arguments as to why he should be permitted to file a late proof of claim in the Chapter 11 Cases simply cannot arise to the type of "unusual instance[]" in which "inadvertence, ignorance of the rules, or mistakes construing the rules . . . [would] constitute excusable neglect." In re Enron Corp., 419 F.3d at 123; In re BH S & B Holdings LLC, 435 B.R. at 168.

**A. The Reason for the Delay, Including Whether it was Within the Reasonable Control of the Movant**

21. Although not clearly stated, it appears that the Movant's sole basis for his motion and request for permission to file his claim late is his unsupported assertion that he received no notice concerning the bankruptcy. However, as noted above, a "bald denial of receipt, without more, is legally insufficient to overcome the presumption of receipt." Memorandum Opinion and Order Denying Motion to Lift the Automatic Stay and Permit a Late-Filed Claim of Jorge Cerron, In re Residential Capital, LLC, et al., No. 12-12020 (MG), Docket No. 7333 at 21 (Bankr. S.D.N.Y. July 31, 2014).

22. Further, even assuming that Movant did not in fact receive the Bar Date Notice (which the Borrower Trust denies) despite such notice being mailed to Movant's Address, he acknowledges receipt of the Notice of Bankruptcy Status that was filed in Movant's Lawsuit in October 2014, more than five years ago. [Docket No. 10679 at p. 1 (acknowledging that he received the Notice of Bankruptcy Status "through local counsel's receipt"; see also Docket No. 10679 at p. 6 (certificate of service showing service upon Movant's attorney)].

23. Importantly, the Notice of Bankruptcy Status (which Movant acknowledges receipt thereof) advised Movant, *inter alia*, that (1) he failed to file a proof of claim, and (2) such failure would preclude him from receiving any distributions unless a late proof of claim is deemed timely filed by an order of the bankruptcy court. [Docket No. 10679 at pp. 4, 6].

24. Despite receiving the Notice of Bankruptcy Status in 2014, and despite being aware that he had failed to file a proof of claim, Movant took no action to protect his rights until filing the instant motion in late December 2019. Movant makes no attempt to explain the reason for his failure to act in the intervening five years since he received the Notice of Bankruptcy Status in 2014. In the matter before the Court, the reason for the delay was based solely on the Movant's failure to act over at least the past five years,<sup>7</sup> and was within the Movant's reasonable control. Accordingly, this factor weighs heavily in favor of denying the Motion.

**B. The Danger of Prejudice to the Debtors**

25. In his proposed Proof of Claim, Movant asserts that his claim against Debtor is in the amount of \$231,000.00. The Debtors and the Borrower Trust would be prejudiced if the Court grants the relief requested by the Movant. Granting the Motion would undoubtedly invite similar motions and negate the goal of finality that claims' bar dates are intended to instill. See In re Enron Corp., 419 F.3d at 131-32 (affirming bankruptcy court's denial of late filed proof of claim and noting that permitting the first claim could invite late claims from many other potential claimants with similar claims). The Debtors, and now the ResCap Liquidating Trust and Borrower Trust (as successors to the Debtors), have been tirelessly working to reconcile the thousands of claims filed in the Chapter 11 Cases in order to make initial and final cash distributions to holders of Allowed Borrower Claims asserted against Debtor. At this stage of the

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<sup>7</sup> The period of time is seven years from the date that the Bar Date Notice was mailed to Movant in 2012.

bankruptcy, all funds allocated for distributions to holders of Allowed Borrower Claims against GMAC Mortgage have already been distributed [Docket Nos. 10197 and 10582], so no funds remain to satisfy whatever claim Movant now seeks to assert in the bankruptcy. At this time, the only remaining funds in the Borrower Trust have been allocated for payment of Trust operating expenses necessary to keep the Trust open during the time necessary to resolve the insurance coverage adversary action which recovery, if any, is payable only to holders of Allowed Claims against the debtor, Residential Funding Company (“RFC”), and upon final resolution of the insurance coverage adversary action make a final distribution to holders of Allowed Claims against RFC. None of the remaining funds are allocated for either defending against or distributions to holders of Allowed Claims against GMAC Mortgage. The claims reconciliation process would have no end if motions seeking similar relief as that sought by the Movant are granted by the Court. On this basis, the Motion should be denied. Moreover, this Court has previously denied motions filed in these Chapter 11 Cases by claimants seeking an opportunity to file an untimely claim.<sup>8</sup> Accordingly, this factor weighs heavily in favor of denying the Motion.

### **C. Whether the Movant Acted in Good Faith**

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<sup>8</sup> See, e.g., See Order Denying Motion for Order Permitting MED&G Group LP to File a Late Proof of Claim [Docket No. 3648], In re Residential Capital, LLC, et al., Case No. 12-12020 (MG) (Bankr. S.D.N.Y. May 17, 2013); Order Denying Request for Late-Filed Proof of Claim Filed by Donna Chinloy [Docket No. 3973] In re Residential Capital, LLC, et al., Case No. 12-12020 (MG) (Bankr. S.D.N.Y. June 13, 2013); and Memorandum Opinion and Order Denying Motion to Allow Late Filed Claim of Michael Dockery [Docket No. 8076] In re Residential Capital, LLC, et al., Case No. 12-12020 (MG) (Bankr. S.D.N.Y. February 6, 2015).

The Court also denied the motion filed by Julio Solano requesting, among other things, to file a late proof of claim, but approved the Debtors’ and Mr. Solano’s resolution of issues, which provided for a modification of the automatic stay to allow Mr. Solano to pursue non-monetary claims in his state court action. See Stipulation and Order Resolving (I) Motions by Julio Solano (A) for Relief from the Automatic Stay and (B) to File a Late Proof of Claim and (II) Adversary Proceeding Filed by Julio Solano [Docket No. 4236], In re Residential Capital, LLC, et al., Case No. 12-12020 (MG) (Bankr. S.D.N.Y. July 15, 2013).

Notably, these unsuccessful attempts to obtain leave to file late claims were filed years before the instant motion was filed. As such, the delays in the earlier unsuccessful motions were significantly shorter than the seven-year delay here, yet those motions were still denied. The prejudice here is even greater given the time that has elapsed and the distributions that have already been made.

26. The Borrower Trust currently has no information whether the Movant has acted in good or bad faith, other than his filing the one-page motion with no explanation as to the basis for requesting leave to file the proof of claim more than seven years after the Bar Date and with no explanation regarding the reason for his delay. Based on this information, there is certainly reason to question whether the Movant has acted in good faith.

**D. The Length of Delay and its Potential Impact on Judicial Proceedings**

27. Here, the delay between the Bar Date and the Motion is more than seven years after the Bar Date. Other courts have rejected late claims with significantly shorter delays. Memorandum Opinion and Order Denying Motion to Allow Late Filed Claim of Michael Dockery, In re Residential Capital, LLC, et al., No. 12-12020 (MG), Docket No. 8076 at 10-11 (Bankr. S.D.N.Y. February 6, 2015) (collecting cases where courts rejected claims filed three and one-half months, six months, and fifteen months, respectively after bar date). In light of the length of this extreme delay, along with the lack of justifiable reasons and circumstances for the delay, the Borrower Trust submits that this Pioneer factor overwhelmingly favors the Borrower Trust. See In re Enron Corp., 419 F.3d at 128 (length of the delay “must be considered in the context of the proceeding as a whole” and, in some instances, courts have rejected claims filed just one day late) (citing In re Kmart Corp., 381 F.3d 709, 714-15 (7th Cir. 2004), cert. denied sub nom. Simmons v. Kmart Corp., 543 U.S. 1056 (2005)).

WHEREFORE, the Borrower Trust respectfully submits that the Motion should be denied and the Movant be barred from asserting any claims against the Debtors’ estates.<sup>9</sup>

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<sup>9</sup> The Borrower Claims Trust submits this objection on the procedural basis that it is untimely and because Movant has failed to demonstrate excusable neglect, as set forth above. In order to conserve resources, the Borrower Claims Trust has not addressed the substantive merits of Movant’s proof of claim herein. However, if the Court should grant Movant’s motion and allow him leave to file his proof of claim, the Borrower Claims Trust reserves the right to file an objection to address the substantive merits of Movant’s proof of claim.



Dated: February 4, 2020

POLSINELLI

/s/ Daniel J. Flanigan

Daniel J. Flanigan, Esq.

Jason A. Nagi, Esq.

600 Third Avenue, 42<sup>nd</sup> Floor

New York, New York 10016

(212) 684-0199 (Telephone)

(212) 759-8290 (Facsimile)

*Counsel for the ResCap Borrower Claims Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of February, 2020, a true and correct copy of *The ResCap Borrower Claims Trust's Objection to Andrew R. Shaddock's Motion to Accept Proof of Claim Late and Herewith* was served electronically to all the interested parties registered to receive ECF notification from the court, and served by First-Class United States Mail to:

Andrew R. Shaddock  
276 Longhill Street  
Springfield, MA 01108

/s/ Daniel J. Flanigan

# **Exhibit 1**

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

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

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**DECLARATION OF JILL HORNER**

I, Jill Horner, hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury:

1. I serve as the Chief Financial Officer for the ResCap Liquidating Trust (the “**Liquidating Trust**”), and from May 2013 to December 17, 2013, I served as Chief Finance Executive for Residential Capital, LLC and its debtor-affiliates (collectively “**ResCap**”), as the debtors and debtors in possession in the Chapter 11 Cases (collectively, the “**Debtors**”). I have been employed by affiliates of ResCap since 2000, originally as the Manager of Financial Planning and Analysis for Residential Capital Group, a managerial division under Residential Funding Company, LLC. I became a Senior Finance Officer for Originations on or around 2003 and expanded my role to include Financial Servicing Operations on or around 2007, a position I held until 2010, when I became interim Senior Financial Officer for the International Business Group. In 2011, I became the ResCap Senior Director for Financial Planning and Analysis, a position I held until I became the Chief Finance Executive.

2. In my role as Chief Finance Executive at ResCap, I was responsible for, among other things, operational accounting, financial forecasting and analytics, accounts

payable processing, tax and treasury matters, including cash forecasting and cash management. In my current position as Chief Financial Officer to the Liquidating Trust, among my other duties, I continue to assist the Trust in connection with the claims reconciliation process. I am authorized to submit this declaration in support of *The Rescap Borrower Claims Trust's Objection to Andrew Shaddock's Motion to Accept Proof of Claim Late and Herewith*.

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' and Liquidating Trust's operations and finances, information learned from my review of the Debtors' and Liquidating Trust's litigation case files, books and records, as well as other relevant documents, and information I have received through my discussions with other members of the Debtors' and Liquidating Trust management or other employees, professionals and consultant of the Debtors and the Liquidating Trust, and/or Kurtzman Carson Consultants LLC ("KCC"), the Debtors' notice and claims agent, or my opinion based upon my experience, expertise, and knowledge of the Debtors' and Liquidating Trust's litigation matters, financial condition and history.

4. In making these statements based on my review of the Debtors' and Liquidating Trust's litigation case files, books and records, relevant documents, and other information prepared or collected by the Debtors' and Liquidating Trust's employees, consultants or counsel, I have relied upon these employees, consultants, and counsel accurately recording, preparing, collecting, or verifying any such documentation and other information. If I were called upon to testify, I could and would testify competently to the facts set forth in the Objection on that basis.

5. I have reviewed the Debtor's loan file of Andrew R. Shaddock's property located at 45 Middlesex, Springfield, Massachusetts 01109 (the "Loan File"). The Loan File lists 1106 Main St., Holyoke, Massachusetts 01040 as the mailing address for Mr. Shaddock. Attached hereto is Ex. 1-A, which is a true and accurate copy of the excerpt from the loan file reflecting Movant's mailing address.

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

January 31, 2020  
Date

Jill Horner  
Jill Horner

EXHIBIT 1-A

Date Data as-of: July 18, 2012

**Loan History**

Account Number	Name Primary Borrower	Name Secondary Borrower	Property Address	Mailing Address
0602158571	ANDREW R SHADDOCK		45 MIDDLESEX STREET  SPRINGFIELD MA 01109	1106 MAIN ST  HOLYOKE MA 01040
<b>Investor Info</b>				
Investor Acct No - Prim	533905575			
Investor Number	50150			
Investor Name Full	GMAC MORTGAGE			
Investor Id				
<b>Previous Servicer Info</b>				
Previous Account Number	AF0048656958			
Seller Company Name	FAMILY CHOICE MORTGAGE CORPORATION			

Loan Info	Dates	Current Balances	Uncollected	Year-To-Date
Am Flag N	Int Collected To 01/01/2011	Principal \$89,340.26	Late Charges \$0.00	Interest \$0.00
Loan Type Conventional	Next Due 02/01/2011	Escrow (\$513.92)	Interest \$0.00	Taxes \$0.00
Lien Position 01	Last Payment 03/07/2011	Unapplied \$0.00	Fees (\$12,652.73)	
Interest Rate 6.875%	Last Activity 07/13/2012	Buydown \$0.00	Opt \$0.00	
Collection Status REO	Setup Date 10/17/2008			
	Maturity Date 11/01/2038			

**Financial**

Account Number	Trans Added Date	Date Interest Paid	Current	Prin Bal after trans	Transaction Description	Transaction Reason Code	Trans Type	Trans Amount	To Principal	To Interest Amt	To Escrow Amt	To Fee Amt	To Unapplied Funds Amt	To Credit Insurance Amt	To Late Charge Amt
0602158571	07/13/2012	01/01/2011	\$0.00		Write-Off	040	WFF	(\$100.00)	\$0.00	\$0.00	\$0.00	(\$100.00)	\$0.00	\$0.00	\$0.00
0602158571	07/12/2012	01/01/2011	\$0.00		FEE	040	FB	\$4,422.32	\$0.00	\$0.00	\$0.00	\$4,422.32	\$0.00	\$0.00	\$0.00
0602158571	07/12/2012	01/01/2011	\$0.00		FEE	040	FR	(\$100.00)	\$0.00	\$0.00	\$0.00	(\$100.00)	\$0.00	\$0.00	\$0.00
0602158571	07/12/2012	01/01/2011	\$0.00		FEE	056	FP	(\$100.00)	\$0.00	\$0.00	\$0.00	(\$100.00)	\$0.00	\$0.00	\$0.00
0602158571	07/12/2012	01/01/2011	\$0.00		FEE	096	FP	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$0.00	\$0.00	\$0.00
0602158571	07/10/2012	01/01/2011	\$0.00		FEE	040	FE	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	\$0.00	\$0.00	\$0.00
0602158571	07/10/2012	01/01/2011	\$0.00		FEE	096	FP	(\$100.00)	\$0.00	\$0.00	\$0.00	(\$100.00)	\$0.00	\$0.00	\$0.00
0602158571	07/06/2012	01/01/2011	\$89,340.26		Escrow Disb-REO Fire		E23	(\$73.00)	\$0.00	\$0.00	(\$73.00)	\$0.00	\$0.00	\$0.00	\$0.00
0602158571	07/06/2012	01/01/2011	\$0.00		FEE	040	FB	\$60.00	\$0.00	\$0.00	\$0.00	\$60.00	\$0.00	\$0.00	\$0.00
0602158571	07/02/2012	01/01/2011	\$0.00		FEE	040	FB	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	\$0.00	\$0.00	\$0.00
0602158571	06/08/2012	01/01/2011	\$0.00		FEE	040	FB	\$120.00	\$0.00	\$0.00	\$0.00	\$120.00	\$0.00	\$0.00	\$0.00
0602158571	06/06/2012	01/01/2011	\$89,340.26		Escrow Disb-REO Fire		E23	(\$73.00)	\$0.00	\$0.00	(\$73.00)	\$0.00	\$0.00	\$0.00	\$0.00

# **Exhibit 2**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
**In re** : **Chapter 11**  
:  
**RESIDENTIAL CAPITAL, LLC, et al.,<sup>1</sup>** : **Case No. 12-12020 (MG)**  
:  
:  
:  
**Debtors.** : **(Jointly Administered)**  
:  
-----X

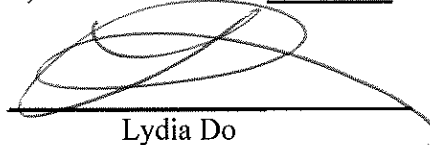
**AFFIDAVIT OF SERVICE**

I, Lydia Do, depose and say that I am employed by Kurtzman Carson Consultants LLC (KCC), the claims and noticing agent for the Debtors.

A. On or before October 5, 2012 at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail upon **Andrew R. Shaddock, 1106 Main St, Holyoke, MA, 01040**. As of the date of this Affidavit, the mailing to this address has not been returned to KCC as undeliverable:

- **Notice of Deadlines for Filings Proofs of Claim, attached hereto as Exhibit A**

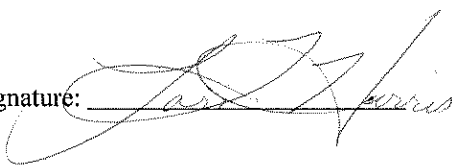
Dated: February 3, 2020

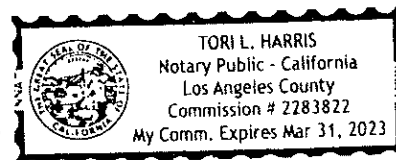
  
Lydia Do

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 3<sup>rd</sup> of February 2020, by Lydia Do, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: 



<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Residential Capital, LLC (0738); ditech, LLC (7228); DOA Holding Properties, LLC (4257); DOA Properties IX (Lots-Other), LLC (3274); EPRE LLC (7974); Equity Investment I, LLC (2797); ETS of Virginia, Inc. (1445); ETS of Washington, Inc. (0665); Executive Trustee Services, LLC (8943); GMAC Model Home Finance I, LLC (8469); GMAC Mortgage USA Corporation (6930); GMAC Mortgage, LLC (4840); GMAC Residential Holding Company, LLC (2190); GMAC RH Settlement Services, LLC (6156); GMACM Borrower LLC (4887); GMACM REO LLC (2043); GMACR Mortgage Products, LLC (6369); GMAC-RFC Holding Company, LLC (3763); HFN REO Sub II, LLC (N/A); Home Connects Lending Services, LLC (9412); Homecomings Financial Real Estate Holdings, LLC (6869); Homecomings Financial, LLC (9458); Ladue Associates, Inc. (3048); Passive Asset Transactions, LLC (4130); PATI A, LLC (2729); PATI B, LLC (2937); PATI Real Estate Holdings, LLC (5201); RAHI A, LLC (3321); RAHI B, LLC (3553); RAHI Real Estate Holdings, LLC (5287); RCSFJV204, LLC (2722); Residential Accredi Loans, Inc. (8240); Residential Asset Mortgage Products, Inc. (5181); Residential Asset Securities Corporation (2653); Residential Consumer Services of Alabama, LLC (5449); Residential Consumer Services of Ohio, LLC (4796); Residential Consumer Services of Texas, LLC (0515); Residential Consumer Services, LLC (2167); Residential Funding Company, LLC (1336); Residential Funding Mortgage Exchange, LLC (4247); Residential Funding Mortgage Securities I, Inc. (6294); Residential Funding Mortgage Securities II, Inc. (8858); Residential Funding Real Estate Holdings, LLC (6505); Residential Mortgage Real Estate Holdings, LLC (7180); RFC Asset Holdings II, LLC (4034); RFC Asset Management, LLC (4678); RFC Borrower LLC (5558); RFC Constructing Funding, LLC (5730); RFC REO LLC (2407); RFC SPJV-2002, LLC (4670); RFC-GSAP Servicer Advance, LLC (0289)



# **EXHIBIT A**

# RESCAP

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Residential Capital, LLC (ResCap), previously announced that it and its subsidiaries, including GMAC Mortgage, are restructuring under Chapter 11. Although you may not be familiar with our name, ResCap is the parent company of GMAC Mortgage. You are receiving this letter because you have been identified as a current customer, or were at one time considering completing a loan application with GMAC Mortgage.

From time to time throughout these Chapter 11 proceedings, you may receive legal notices in the mail related to ResCap's bankruptcy case. Enclosed with this letter is a legal document, which is being mailed to a wide range of parties. The legal notice enclosed with this letter relates to the process for filing "Proofs of Claim" in our Chapter 11 proceedings. This notice is being sent to potential creditors who are or may be owed payment for obligations that arose prior to May 14, 2012, the date that ResCap filed for Chapter 11.

ResCap is providing this notice to all customers and mortgage loan applicants not because ResCap believes that you have claims against ResCap, but because ResCap may be unaware of claims a customer believes he or she may have.

The enclosed notice describes the "Bar Date" – the legal deadline by which any creditor must file a Proof of Claim in these Chapter 11 proceedings for any obligations that arose prior to May 14, 2012. **The Bar Date is November 9, 2012 at 5:00 p.m. (Eastern Time).**

Please review the enclosed notice materials carefully. If you believe you have a claim against the Debtors for a matter or obligation that arose prior to May 14, 2012, you must file a Proof of Claim by November 9, 2012 at 5:00 p.m. (Eastern Time), in accordance with the procedures set forth in the notice. **A Proof of Claim form may be obtained at [www.kccllc.net/rescap](http://www.kccllc.net/rescap).**

If you are a defendant in a foreclosure action you do not need to file a Proof of Claim to protect your defense to foreclosure, unless you have asserted any affirmative defenses that request monetary relief. You do not need to file a Proof of Claim for you mortgage amount. Your obligations under your loan agreement have not changed. As such, you should continue to make your scheduled loan payments on time and in full to the address listed on your monthly account statement.

**For additional information, please contact the ResCap Restructuring Hotline at 888-926-3479, or submit an inquiry at [www.kccllc.net/rescap](http://www.kccllc.net/rescap).** If you require legal advice, however, you may also wish to consult a lawyer to discuss the filing of a Proof of Claim.

Thank you for your continued support.

Residential Capital, LLC

**If you have any questions related to this notice, please call (888) 926-3479**

MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Gary S. Lee  
Lorenzo Marinuzzi

*Counsel for the Debtors and  
Debtors in Possession*

**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
.....	)	

**NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM**

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST RESIDENTIAL CAPITAL, LLC OR ITS AFFILIATED ENTITIES THAT ARE ALSO DEBTORS AND DEBTORS IN POSSESSION:

On August 29, 2012, the United States Bankruptcy Court for the Southern District of New York (the U.S. Bankruptcy Court”) entered an order (the “Bar Date Order”) establishing **November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time)** (the “General Bar Date”) as the last date and time for each person or entity (including individuals, partnerships, corporations, joint ventures, corporations, estates, trusts, and governmental units) to file a proof of claim against Residential Capital, LLC its affiliates that are also debtors and debtors in possession in those proceedings (collectively, the “Debtors”). Solely as to governmental units the Bar Date Order established **November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time)** as the last date and time for each such governmental unit to file a proof of claim against the Debtors (the “Governmental Bar Date,” and, together with the General Bar Date, the “Bar Dates”).

The Bar Dates and the procedures set forth below for filing proofs of claim apply to all claims against the Debtors that arose before May 14, 2012, the date on which the Debtors commenced cases under Chapter 11 of the United States Bankruptcy Code (the “Petition Date”), except for those holders of the claims listed in section 4 below that are specifically excluded from the General Bar Date filing requirement.

## 1. WHO MUST FILE A PROOF OF CLAIM

You **MUST** file a proof of claim to vote on a Chapter 11 plan filed by the Debtors or to share in distributions from the Debtors' bankruptcy estates if you have a claim that arose before the filing of the Debtors' Chapter 11 petitions on the Petition Date and it is not one of the types of claims described in section 4 below. Claims based on acts or omissions of the Debtors that occurred before the Petition Date must be filed on or before the applicable Bar Date, even if such claims are not now fixed, liquidated or certain or did not mature or become fixed, liquidated or certain before the Petition Date.

Under section 101(5) of the Bankruptcy Code and as used in this Notice, the word "claim" means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

## 2. WHAT TO FILE

Each filed proof of claim must conform substantially to the Proof of Claim Form (as defined in the Bar Date Order). Copies of the Proof of Claim Form may be obtained at <http://www.kccllc.net/rescap>. Each proof of claim must be **signed** by the claimant or by an authorized agent of the claimant. Each proof of claim must be written in English and be denominated in United States currency. You should attach to each completed proof of claim any documents on which the claim is based (if voluminous, attach a summary) or an explanation as to why the documents are not available.

Any holder of a claim against more than one Debtor must file a separate proof of claim with respect to each such Debtor and all holders of claims must identify on their proof of claim the specific Debtor against which their claim is asserted. A list of the names of the Debtors and their respective case numbers is attached to the Proof of Claim Form.

Under the Bar Date Order, the filing of a Proof of Claim Form shall be deemed to satisfy the procedural requirements for the assertion of administrative priority claims under section 503(b)(9) of the Bankruptcy Code.

### 3. WHEN AND WHERE TO FILE

Except as provided for herein, all proofs of claim must be filed so as to be actually received **on or before November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time), or solely as to governmental units on or before November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time)**, at:

(i) **If by mail or overnight courier:**  
**ResCap Claims Processing Center, c/o KCC**  
**PO Box 5004**  
**Hawthorne, CA 90250**

(ii) **if by hand delivery:**

United States Bankruptcy Court for the Southern District of New York  
One Bowling Green, Room 534  
New York, New York 10004

or

ResCap Claims Processing Center, c/o KCC  
2335 Alaska Ave  
El Segundo, CA 90245

Proofs of claim will be deemed timely filed only if **actually received** at the ResCap Claims Processing Center or hand delivered to the U.S. Bankruptcy Court on or before 5:00 p.m. (Prevailing Eastern Time) on the applicable Bar Date. Proofs of claim **may not** be delivered by facsimile, or electronic mail.

### 4. WHO NEED NOT FILE A PROOF OF CLAIM

You do not need to file a proof of claim on or before the General Bar Date if you are:

- (a) Any person or entity that has **already** properly filed a proof of claim against the applicable Debtor or Debtors with the Clerk of the Bankruptcy Court for the Southern District of New York in a form substantially similar to the Proof of Claim Form;
- (b) Any person or entity whose claim is listed on the Debtors' schedules of assets and liabilities and/or schedules of executory contracts and unexpired leases (collectively, the "Schedules"), **provided that:** (i) the claim is **not** scheduled as "disputed," "contingent" or "unliquidated"; **and** (ii) the claimant agrees with the amount, nature and priority of the claim as set forth in the Schedules; **and** (iii) the claimant agrees that the claim is an obligation of the specific Debtor against which the claim is listed on the Schedules;

- (c) Any person or entity that holds a claim that has been allowed by an order of the Court entered on or before the applicable Bar Date;
- (d) Any person or entity whose claim has been paid in full by any of the Debtors;
- (e) Any person or entity that holds a claim for which specific deadlines have been fixed by an order of the Court entered on or before the applicable Bar Date;
- (f) Any person or entity that holds a claim allowable under sections 503(b) and 507(a) of the Bankruptcy Code as an expense of administration (other than any claim allowable under section 503(b)(9) of the Bankruptcy Code);
- (g) Any Debtor having a claim against another Debtor or any of the non-debtor subsidiaries of Residential Capital, LLC having a claim against any of the Debtors;
- (h) Any person or entity that holds an interest in any of the Debtors, which interest is based exclusively upon the ownership of common stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; provided, however, that interest holders that wish to assert claims (as opposed to ownership interests) against any of the Debtors that arise out of or relate to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, must file Proofs of Claim on or before the applicable Bar Date, unless another exception identified herein applies;
- (i) Any person or entity whose claim is limited exclusively to the repayment of principal, interest, and/or other applicable fees and charges (a “Debt Claim”) on or under any bond or note issued or guaranteed by the Debtors pursuant to an indenture (the “Debt Instruments”); provided, however, that (i) the foregoing exclusion in this subparagraph shall not apply to the Indenture Trustee under the applicable Debt Instruments (an “Indenture Trustee”), (ii) the Indenture Trustee shall be required to file one Proof of Claim, on or before the General Bar Date, with respect to all of the Debt Claims on or under each of the applicable Debt Instruments, and (iii) any holder of a Debt Claim wishing to assert a claim, other than a Debt Claim, arising out of or relating to a Debt Instrument shall be required to file a Proof of Claim on or before the Bar Date, unless another exception in this paragraph applies;
- (j) Any person or entity holding a claim for principal, interest and other fees and expenses under the Debtors’ secured financing facilities (the “Financing Facilities”)<sup>1</sup> to the extent of, and only for such claims relating to the Financing Facilities; or

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<sup>1</sup> “Financing Facilities” as used herein shall mean the Debtors’ financing facilities that are exempt from filing a Proof of Claim Form as previously ordered by the Court [Docket Nos. 471, 490 and 491].

- (k) Any person or entity that holds a claim against a securitization trust (each a “Trust”) that is based exclusively upon the ownership of a note, bond and/or certificate backed by mortgage loans held by the Trust; provided, however, that holders of such notes, bonds and/or certificates that wish to assert claims against the Debtors (as opposed to claims against the applicable Trust) must file Proofs of Claim on or before the applicable Bar Date, unless another exception identified herein applies.

This Notice is being sent to many persons and entities that have had some relationship with or have done business with the Debtors but may not have an unpaid claim against the Debtors. Receipt of this Notice does not mean that you have a claim or that the Debtors or the Court believe that you have a claim against the Debtors.

## **5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

If you have a claim arising out of the rejection of an executory contract or unexpired lease, you must file a proof of claim by the later of (a) the applicable Bar Date and (b) thirty (30) days after the date of entry of an order of rejection (unless the order of rejection provides otherwise).

## **6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATE**

**ANY HOLDER OF A CLAIM THAT IS NOT EXCEPTED FROM THE REQUIREMENTS OF THE BAR DATE ORDER, AS DESCRIBED IN SECTION 4 ABOVE, AND THAT FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM WILL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS, THEIR SUCCESSORS, THEIR CHAPTER 11 ESTATES AND THEIR RESPECTIVE PROPERTY OR FILING A PROOF OF CLAIM WITH RESPECT TO SUCH CLAIM, FROM VOTING ON ANY PLAN OF REORGANIZATION FILED IN THESE CASES AND FROM PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS’ CASES ON ACCOUNT OF SUCH CLAIM OR RECEIVING FURTHER NOTICES REGARDING SUCH CLAIM.**

## **7. THE DEBTORS’ SCHEDULES AND ACCESS THERETO**

You may be listed as the holder of a claim against one or more of the Debtors in the Debtors’ Schedules. If you rely on the Debtors’ Schedules, it is your responsibility to determine that your claim is accurately listed on the Schedules. If you agree with the nature, amount and status of your claim as listed on the Debtors’ Schedules, and if you do not dispute that your claim is against only the specified Debtor, and if your claim is not described as “disputed,” “contingent,” or “unliquidated,” you need not file a proof of claim. Otherwise, or if you decide to file a proof of claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this Notice.

Copies of the Debtors' Schedules are available for inspection on the Court's internet website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) and on the independent website maintained by the Debtors, <http://www.kccllc.net/rescap>. A login and password to the Court's Public Access to Electronic Court Records ("PACER") are required to access [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) and can be obtained through the PACER Service Center at [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov). Copies of the Schedules may also be examined between the hours of 9:00 a.m. and 4:30 p.m. (Prevailing Eastern Time), Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, One Bowling Green, Room 511, New York, New York 10004-1408.

Copies of the Debtors' Schedules may also be obtained by written request to the Debtors' claims agent at the address set forth below:

**ResCap Claims Processing Center**  
**c/o KCC**  
**PO Box 5004**  
**Hawthorne, CA 90250**

## **8. RESERVATION OF RIGHTS**

The Debtors reserve their right to object to any proof of claim, whether filed or scheduled, on any grounds. The Debtors reserve their right to dispute or to assert offsets or defenses to any claim reflected on the Schedules or any amendments thereto, as to amount, liability, classification or otherwise, and to subsequently designate any claim as disputed, contingent, unliquidated or undetermined.

**A holder of a possible claim against the Debtors should consult an attorney regarding matters in connection with this Notice, such as whether the holder should file a Proof of Claim.**

Dated: New York, New York  
August 29, 2012

BY ORDER OF THE COURT

Gary S. Lee  
Lorenzo Marinuzzi  
MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104

*Counsel for the Debtors and  
Debtors in Possession*

**If you have any questions related to this notice, please call (888) 926-3479**