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Opposition Deadline: April 23, 2013
Reply Deadline: May 7, 2013

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: RESIDENTIAL CAPITAL, LLC, *et al*., Debtors.	Chapter 11 Case No. 12-12020 (MG) (Jointly Administered)
RESIDENTIAL CAPITAL, LLC; DITECH, LLC; DOA HOLDING PROPERTIES, LLC; DOA PROPERTIES IX (LOTS-OTHER), LLC; EPRE LLC; EQUITY INVESTMENTS I, LLC; ETS OF VIRGINIA, INC.; ETS OF WASHINGTON, INC.; EXECUTIVE TRUSTEE SERVICES LLC; GMAC – RFC HOLDING COMPANY, LLC; GMAC MODEL HOME FINANCE I, LLC; GMAC MORTGAGE USA CORPORATION; GMAC MORTGAGE, LLC; GMAC RESIDENTIAL HOLDING COMPANY, LLC; GMAC RH SETTLEMENT SERVICE, LLC; GMACM BORROWER LLC; GMACM REO LLC; GMACR MORTGAGE PRODUCTS, LLC; HFN REO SUB II, LLC; HOME CONNECTS LENDING SERVICES, LLC; HOMECOMINGS FINANCIAL REAL ESTATE HOLDINGS, LLC; HOMECOMINGS FINANCIAL, LLC; LADUE	Adv. Pro. No. 13-01262 (MG)



ASSOCIATES, INC.; PASSIVE ASSET TRANSACTIONS, LLC; PATI A, LLC; PATI B, LLC; PATI REAL ESTATE HOLDINGS, LLC; RAHI A, LLC; RAHI B, LLC; RAHI REAL ESTATE HOLDINGS, LLC; RCSFJV2004, LLC; RESIDENTIAL ACCREDIT LOANS, INC.; RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; RESIDENTIAL ASSET SECURITIES CORPORATION; RESIDENTIAL CONSUMER SERVICES OF ALABAMA, LLC; RESIDENTIAL CONSUMER SERVICES OF OHIO, LLC; RESIDENTIAL CONSUMER SERVICES OF TEXAS, LLC; RESIDENTIAL CONSUMER SERVICES, LLC; RESIDENTIAL FUNDING COMPANY, LLC; RESIDENTIAL FUNDING MORTGAGE EXCHANGE, LLC; RESIDENTIAL FUNDING MORTGAGE SECURITIES I, INC.; RESIDENTIAL FUNDING MORTGAGE SECURITIES II, INC.; RESIDENTIAL FUNDING REAL ESTATE HOLDINGS, LLC; RESIDENTIAL MORTGAGE REAL ESTATE HOLDINGS, LLC; RFC – GSAP SERVICER ADVANCE, LLC; RFC ASSET HOLDINGS II, LLC; RFC ASSET MANAGEMENT, LLC; RFC BORROWER LLC; RFC CONSTRUCTION FUNDING, LLC; RFC REO LLC; and RFC SFJV- 2002, LLC,

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY; ALLSTATE LIFE INSURANCE CO.; ALLSTATE NEW JERSEY INSURANCE CO.; AIG ASSET MANAGEMENT (U.S.), LLC;

Defendants.

MOTION OF LEAD PLAINTIFF, FOR ITSELF AND ON BEHALF OF THE CERTIFIED CLASS, FOR SUMMARY JUDGMENT

New Jersey Carpenters Health Fund, the court-appointed lead plaintiff (the "Lead Plaintiff") in the consolidated securities class action styled as *New Jersey Carpenters Health Fund, et al., on Behalf of Themselves and All Others Similarly Situated v. Residential Capital,*

LLC, et al., pending in the United States District Court for the Southern District of New York (the "District Court"), Case No. 08-CV-8781 (HB) (the "Class Action"), for itself and on behalf of the class of purchasers defined and certified in the Class Action (the "Certified Class" and collectively with the Lead Plaintiff, the "Class Action Parties"), hereby submits this motion (the "Motion") for entry of an order (a) granting summary judgment[1] dismissing all counts in the complaint (the "Adversary Complaint") filed by the above-captioned debtors and debtors-in-possession (the "Debtors") in the above-captioned adversary proceeding (the "Adversary Proceeding") and (b) determining that Misrepresentation Claims (as defined below) against the Debtors are not subject to subordination under section 510 of the Bankruptcy Code. In support of this Motion, Lead Plaintiff respectfully submits as follows:

BACKGROUND

The Class Action

1. On September 22, 2008, Lead Plaintiff commenced the Class Action in the New York Supreme Court, County of New York. The Class Action was removed to the District Court on October 14, 2008. In the Class Action, Lead Plaintiff, for itself and on behalf of the Certified Class, asserts causes of action for violations of sections 11, 12(a), and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77K, 77(a)(2), and 77o, in connection with the purchase of Certificates (as defined below).

2. On May 18, 2009, after its appointment, Lead Plaintiff filed the Consolidated First Amended Complaint (the "CFAC"). On March 31, 2010, the District Court granted in part and denied in part a motion to dismiss the CFAC. On July 30, 2010, several parties moved to intervene in the Class Action on behalf of purchasers of other RMBS offerings.

1 The Class Action Parties are not named as defendants in the Adversary Proceeding. However, as discussed below, the parties to the Adversary Proceeding have agreed to consolidate the Adversary Proceeding and the 3013 Motion (as defined below), in which the Class Action Parties joined, for purposes of the filing of this Motion.

3. On August 16, 2010, Lead Plaintiff and certain other named plaintiffs (collectively, the "Class Action Plaintiffs") filed a motion (the "Initial Certification Motion") [Dist. Ct. Docket No. 103] seeking certification of the then-putative class and their appointment as class representatives. On December 22, 2010, the motions to intervene were granted, and the CFAC was subsequently amended to include the intervening plaintiffs.

4. On January 18, 2011, the District Court denied the Initial Certification Motion, finding that despite meeting the requirements of Fed. R. Civ. P. 23(a), the Class Action Plaintiffs had failed to establish predominance and superiority under Fed. R. Civ. P. 23(b)(3). New Jersey Carpenters Health Fund, et als. v. Residential Capital, LLC, et als., 272 F.R.D. 160, 168, 171 (S.D.N.Y. 2011), *aff'd* 2012 U.S. App. LEXIS 8675 (2d Cir. NY 2012).

5. The Second Circuit granted the Class Action Plaintiffs' motion for leave to appeal, pursuant to Fed. R. Civ. P. 23(f), the denial of the Initial Certification Motion and, on April 30, 2012, affirmed the District Court, without prejudice to the filing of an amended motion for class certification.

6. On August 6, 2012, the Class Action Plaintiffs filed their revised motion for class certification, narrowing the class definition and expanding the record as suggested in the Second Circuit's affirmance of the District Court's previous denial of class certification, and for their appointment as class representatives. See Dist. Ct. Docket Nos. 167 and 168.

7. On October 15, 2012, over the objections of the defendants in the Class Action, the District Court entered the Second Revised Certification Order [Dist. Ct. Docket No. 202] appointing certain Class Action Plaintiffs as Class Representatives and, in connection with certification of the Class, *sua sponte*, further narrowing the definition of the proposed class. Revised Certification Order, at *2.

8. The District Court subsequently granted the Class Action Plaintiffs' application to modify the class definition,[2] acknowledging that the District Court's definition would have excluded certain initial members properly within the intended class. *See* Revised Certification Order, at *7.

9. The Class Action is currently proceeding against the non-Debtor defendants in the District Court, subject to a stipulation and agreed order entered by this Court on February 4, 2013 [Adv. Pro. No. 12-01671, Docket No. 98].

10. Lead Plaintiff, the Certified Class, and certain other named plaintiffs in the Class Action filed a total of twenty-one proofs of claim, including class proofs of claim, in these chapter 11 cases against Debtors Residential Capital LLC, Residential Funding Company, LLC, and Residential Accredit Loans, Inc.

The 3013 Motion

11. On November 27, 2012, AIG Asset Management (U.S.), LLC and affiliated entities, Allstate Insurance Company and affiliated entities, Massachusetts Mutual Life Insurance Company, and Prudential Insurance Company of America and affiliated entities (collectively, the "AIG Movants") filed the *Motion of AIG Asset Management (U.S.), LLC, the Allstate Entities, Massachusetts Mutual Life Insurance Company, and the Prudential Entities for an Order Under Bankruptcy Rule 3013 (i) Classifying RMBS Fraud Claims in the Same Class as the Securitization Trusts' Claims for Purposes of any Chapter 11 Plan for the Debtors and (ii) Directing That Misrepresentation Claims Cannot Be Placed in a Plan Class That Will Be Subordinated Under Bankruptcy Code Section 510(b)* (the "3013 Motion") [Case No. 12-12020, Docket No. 2284].

[2] Defendants in the Class Action have petitioned the Second Circuit for permission to appeal the October 15, 2012 and January 3, 2013 District Court Orders with respect to certification of the Class (2d Cir. Case No. 12-4415).

12. By the 3013 Motion, the AIG Movants sought entry of an order determining, for purposes of any chapter 11 plan with respect to the Debtors, that (a) claims against the Debtors for violations of federal and state securities laws, common-law fraud, and other similar theories (collectively, "Misrepresentation Claims") arising out of the Debtors' misrepresentations and conduct in connection with the purchases by investors (such as Lead Plaintiff and the Certified Class) of residential mortgage-backed securities (the "Certificates") issued by certain trusts (the "Trusts") should be classified as general unsecured claims, together with any claims of the trustees of the Trusts (the "Trustees") against the Debtors for breaches of representations and warranties by the Debtors ("R&W Claims") and (b) Misrepresentation Claims are not subject to subordination under section 510 of the Bankruptcy Code. See 3013 Motion at 1–4.

13. On January 4, 2013, the National Credit Union Administration Board, in its capacity as liquidating agent for Western Corp. Federal Credit Union and U.S. Central Federal Credit Union ("NCUAB"), filed a joinder to the 3013 Motion [Docket No. 2555]. On February 19, 2013, Lead Plaintiff, for itself and on behalf of the Certified Class, filed a joinder to the 3013 Motion [Docket No. 2962].

Opposition to the 3013 Motion

14. On February 19, 2013, the Debtors filed a brief in opposition to the 3013 Motion (the "3013 Opposition") [Docket No. 2953]. In the 3013 Opposition, the Debtors assert that Misrepresentation Claims (a) are subordinated pursuant to section 510(b) of the Bankruptcy Code because the Certificates are securities of either the Debtors or their affiliates, (b) are contractually subordinated pursuant to section 510(a) of the Bankruptcy Code by an agreement among holders and/or subsequent purchasers of Certificates, (c) should be subordinated pursuant

to section 510(c) of the Bankruptcy Code, and (d) are fundamentally different from R&W Claims and should not be similarly classified. See 3013 Opposition at 1–4.

15. Various other parties filed or joined in objections to the relief sought in the 3013 Motion: the Trustees [Docket No. 2967]; the Steering Committee Group of RMBS Holders [Docket No. 2954]; MBIA Insurance Corporation [Docket No. 2955]; the Ad Hoc Group of Junior Secured Noteholders [Docket No. 2957]; and Wilmington Trust, National Association, as indenture trustee for various series of the Debtors' senior unsecured notes [Docket No. 2959].

The Adversary Proceeding

16. Also on February 19, 2013, the Debtors commenced the Adversary Proceeding against the AIG Movants and NCUAB, requesting (a) a declaratory judgment that the Misrepresentation Claims of the AIG Movants and NCUAB, to the extent allowed, are subordinated pursuant to section 510(b) of the Bankruptcy Code to all general unsecured claims against the Debtors' estates or, in the alternative, an order subordinating the Misrepresentation Claims pursuant to section 510(b) of the Bankruptcy Code; (b) a declaratory judgment that the Misrepresentation Claims, to the extent allowed, are subordinated pursuant to section 510(a) of the Bankruptcy Code to all general unsecured claims asserted against the Debtors' estates or, in the alternative, an order subordinating the Misrepresentation Claims pursuant to section 510(a) of the Bankruptcy Code; and (c) an order subordinating the Misrepresentation Claims to all general unsecured claims asserted against the Debtors' estates pursuant to section 510(c) of the Bankruptcy Code. See Adversary Complaint, ¶¶ 91–107.

The Summary Judgment Motions

17. The Debtors and the AIG Movants have agreed to consolidate the 3013 Motion, the 3013 Opposition, and the Adversary Proceeding for purposes of decision, and to proceed on cross-motions for summary judgment.

18. On April 2, 2013, the AIG Movants filed the *Motion of AIG Asset Management (U.S.), LLC, the Allstate Entities, Massachusetts Mutual Life Insurance Company, and the Prudential Entities for Summary Judgment* (the "AIG Summary Judgment Motion") [Docket No. 27], seeking summary judgment dismissing all counts of the Adversary Complaint.

19. Except to the extent inconsistent with the factual assertions set forth in this Motion, Lead Plaintiff hereby incorporates by reference the factual assertions and legal argument set forth in the AIG Summary Judgment Motion as if fully set forth herein.

ARGUMENT

20. Lead Plaintiff hereby joins in and incorporates by reference the arguments and factual assertions set forth in the AIG Summary Judgment Motion as if fully set forth herein.

RESERVATION OF RIGHTS

21. Lead Plaintiff reserves all rights with respect to the Debtors' bankruptcy cases, the claims of the Class Action Parties, and the Class Action, including but not limited to the rights to oppose (a) any motion or adversary proceeding seeking expungement, disallowance, subordination, or other modification of any claims asserted against the Debtors by the Class Action Parties and (b) confirmation of any chapter 11 plan filed in these cases that proposes to disallow or subordinate such claims. Lead Plaintiff further reserves the right to respond to any arguments raised in support of the Debtors' cross-motion for summary judgment or in opposition

to this Motion, the AIG Summary Judgment Motion, or in support of or opposition to any other motion relating to the subject matter hereof.

WHEREFORE, the Class Action Parties respectfully request that the Court (a) enter an order granting summary judgment dismissing all counts in the Debtors' adversary complaint and determining that Misrepresentation Claims are not subject to subordination pursuant to section 510 of the Bankruptcy Code and (b) grant the Class Action Parties such other relief as may be just and proper.

Dated: April 2, 2013
New York, New York

Respectfully submitted,

/s/ Michael S. Etkin

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