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Hearing Date: May 23, 2013 at 2:00 p.m. (Prevailing Eastern Time)
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;	Adv. Pro. No. 13-01262 (MG)

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HOMECOMINGS FINANCIAL, LLC; LADUE 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 UNION CENTRAL LIFE INSURANCE COMPANY, AMERITAS LIFE INSURANCE CORP., AND ACACIA LIFE INSURANCE COMPANY FOR SUMMARY JUDGMENT

Union Central Life Insurance Company, Ameritas Life Insurance Corp., and Acacia Life Insurance Company (collectively, the "Union Central Parties"), plaintiffs in the civil action

styled as *Union Cent. Life Ins. Co. et al. v. Credit Suisse First Boston Mortg. Sec. Corp. et al.*, pending in the United States District Court for the Southern District of New York, Case No. 11-CV-2890 (GBD) (the "Union Central Action") hereby submit 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, the Union Central Parties respectfully submit as follows:

BACKGROUND

The Union Central Action

1. The Union Central Parties filed the Union Central Action in the District Court on April 28, 2010. The Union Central Action asserts claims under the Securities Exchange Act of 1934 (the "1934 Act") and New York state law for common-law fraud, unjust enrichment, aiding and abetting, violations of section 10(b)(5) of the 1934 Act and Rule 10b-5 promulgated thereunder, violations of section 20(a) of the 1934 Act, and violations of section 20(b) of the 1934 Act.

2. By orders dated March 29, 2013, the District Court denied motions to dismiss with respect to certain defendants in the Union Central Action and granted motions to dismiss with respect to other defendants. See Dist. Ct. Docket Nos. 261, 262, 263. The motions to dismiss filed by Ally Financial Inc., Residential Funding Securities, LLC, and Bruce Paradis were granted, but the Union Central Parties were granted leave to file a letter motion to amend

[1] The Union Central 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 Union Central Parties joined, for the filing of this Motion.

their complaint within sixty days after the date of the order, which the Union Central Parties intend to do. See Dist. Ct. Docket No. 263.

3. The Union Central Parties filed proofs of claim against Debtors Residential Capital, LLC [Claim Nos. 4809, 4811, 4815], Residential Accredit Loans, Inc. [Claim Nos. 4808, 4812, 4813], and Residential Funding Company, LLC [Claim Nos. 4810, 4814, 4816].

The 3013 Motion

4. 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].

5. 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 the Union Central Parties) 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.

6. 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, the Union Central Parties filed a joinder to the 3013 Motion [Docket No. 2966].

Opposition to the 3013 Motion

7. 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.

8. 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

9. 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

10. 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.

11. 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.

12. Except to the extent inconsistent with the factual assertions set forth in this Motion, the Union Central Parties hereby incorporate by reference the factual assertions and legal argument set forth in the AIG Summary Judgment Motion as if fully set forth herein.

ARGUMENT

13. The Union Central Parties hereby join in and incorporate by reference the arguments and factual assertions set forth in the AIG Summary Judgment Motion as if fully set forth herein.

RESERVATION OF RIGHTS

14. The Union Central Parties reserve all rights with respect to the Debtors' bankruptcy cases, the claims of the Union Central Parties, and the Union Central 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 Union Central Parties and (b) confirmation of any chapter 11 plan filed in these cases that proposes to disallow or subordinate such claims. The Union Central Parties further reserve 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.

[*signature page follows*]

WHEREFORE, the Union Central 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 Union Central 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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