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Objection Deadline: August 14, 2013 at 4:00 PM (ET)

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Marion L. Jenkins and Sharon Jenkins,	:	
	:	Adv. Proc. 12-01935 (MG)
Plaintiffs,	:	
v.	:	
Residential Funding Company, LLC, et al.	:	
Defendants.	:	
In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, *et al.*,	:	
	:	Chapter 11
Debtors	:	Jointly Administered

MOTION TO DISMISS ADVERSARY PROCEEDING PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND (4)-(6) BY DEFENDANTS JUDY FABER AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

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EXHIBITS

Exhibit 1: Proposed Order

Defendants Judy Faber ("Ms. Faber") and Mortgage Electronic Registration Systems, Inc. ("MERS") move the Court to dismiss the above-referenced adversary proceeding (the "Adversary Proceeding") pursuant to Rules 12(b)(1) and (4)-(6) of the Federal Rules of Civil Procedure,[1] as made applicable by Rule 7012 of the Federal Rules of Bankruptcy Procedure, as follows:

PROCEDURAL HISTORY

1. On May 14, 2012, Residential Capital, LLC and certain of its direct and indirect subsidiaries (collectively, the "ResCap Debtors") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in this Court. Pursuant to the *Order Under Bankruptcy Rule 1015 Authorizing Joint Administration of Debtors' Chapter 11 Cases* entered by this Court on May 14, 2012 [Docket No. 59], the ResCap Debtors' Chapter 11 cases are being jointly administered and under Case No. 12-12020 (MG) (the "Bankruptcy Case").

2. On November 9, 2012, Marion L. Jenkins and Sharon Jenkins ("Plaintiffs") filed a complaint (the "Original Complaint") [Docket No. 1] initiating this adversary proceeding against Ms. Faber, MERS, and nine other defendants.

3. On March 28, 2013, this Court entered an *Order Granting Debtors' Motion Pursuant to Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12(e) for a More Definitive Statement* [Docket No. 26], which directed the Plaintiffs to file an amended complaint on or before May 20, 2013.

[1] Unless specifically stated otherwise, any reference to a "Rule" refers to the Federal Rules of Civil Procedure.

4. On May 20, 2013, Plaintiffs filed what is designated as an *Amended Complaint* on the Court's electronic docket (the "Amended Complaint") [Docket No. 32].[2]

5. Pursuant to paragraph 4(3) on page 3 of the *Amended Order Approving Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplement to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and former Borrower and (B) Related Relief* entered in the Bankruptcy Case [Docket No. 3490], the deadline to respond to the Amended Complaint is thirty (30) days following the Pre-Trial Status Conference, which was adjourned to June 12, 2013 at a hearing before this Court on May 14, 2013. Thus, the deadline to respond to the Amended Complaint is July 12, 2013.

FACTS AS ALLEGED IN THE AMENDED COMPLAINT

6. On or about February 28, 2006, Plaintiffs executed a note in favor of Mortgage Lenders Network USA, Inc. ("MLN USA") in the amount of $300,000.00 (the "Note"). (*See* Original Complaint, Exhibit A).

7. The Note is secured by the real property known as 405 Grant Park Place, Atlanta, Georgia 30315, pursuant to a *Security Deed* (the "Security Deed") executed contemporaneously with the Note. (*See* Original Complaint, Exhibit A).

[2] The Amended Complaint actually contains the same title as the Original Complaint, and is indeed, identical to the Original Complaint in all respects except for the following: 1) the Amended Complaint contains a handwritten correction of the case number; 2) the Amended Complaint omits some of the original exhibits filed with the Original Complaint; and 3) the Amended Complaint contains an Adversary Proceeding Cover Sheet alleging that a valid assignment has not been completed, that the signature on the Allonge "seems copied or pasted," and that Plaintiffs seek a declaration that the lien and encumbrance are invalid under § 506(a) of the Bankruptcy Code, as well as an injunction to prevent foreclosure.

8. MERS is named as (a) a nominee of MLN USA and MLN USA's successors and assigns and (b) a beneficiary, solely as nominee for MLN USA and MLN USA's successors and assigns. (*See* Original Complaint, Exhibit A).

9. The Security Deed was recorded in the land records of Fulton County, Georgia on March 29, 2006, at 10:24 a.m., in Deed Book 42244, Pg 433, as Instrument No. 2006-0095865. (*See* Original Complaint, Exhibit A).

10. By a *Corrective Assignment* dated July 7, 2010 ("Corrective Assignment 1"), Philip A. Hasty and Kathy Krueger, in their respective capacities as Vice President and Assistant Secretary of MERS, assigned the Security Deed to U.S. Bank, N.A. (*See* Amended Complaint, Exhibit B).

11. Corrective Assignment 1 was recorded in the land records of Fulton County, Georgia on October 1, 2010, at 11:47 a.m, in Deed Book 49414, Pg 381, as Instrument No. 2010-0356139. (*See* Amended Complaint, Exhibit B).

12. By a *Corrective Assignment of a Corrective Assignment of a Security Deed* dated September 1, 2011 ("Corrective Assignment 2"), Ricky Thompson and Kathleen Everson, in their capacities as Assistant Secretaries of MERS, assigned the Security Deed to U.S. Bank, National Association, as Trustee for RASC 2006-EMX4. (*See* Amended Complaint, Exhibit A).

13. Corrective Assignment 2 was recorded in the land records of Fulton County, Georgia on October 19, 2011, at 7:35 a.m., in Deed Book 50497, Pg 240, as Instrument No. 2011-0280173. (*See* Amended Complaint, Exhibit A).

14. Ms. Faber, in her capacity as Vice President of Residential Funding Corporation, endorsed the Note to U.S. Bank, National Association, as Trustee, on that certain *Allonge to Note* (the "Allonge") dated March 30, 2006.[3] (*See* Amended Complaint, Exhibit C).

ARGUMENT

I. Rule 12(b)(1) Lack of Subject Matter Jurisdiction

a. Standard

15. Rule 12(b)(1) provides that the court may dismiss an action for lack of subject matter jurisdiction. Bankruptcy courts do not have jurisdiction over suits between nondebtors if the outcome has no "conceivable effect" on the debtors' estate. *See In re Quigley*, 676 F.3d 45, 57-58 (2d Cir. 2012). Once the issue is raised, "[a] plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." *See Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) (citing *Malik v. Meissner*, 82 F.3d 560, 562 (2d Cir. 1996)). When a federal court realizes that it lacks subject matter jurisdiction, it "shall dismiss the action." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 507, 508 (2006).

b. Argument

16. The Amended Complaint is due to be dismissed as to Defendants Ms. Faber and MERS because the Court does not have subject matter jurisdiction over Plaintiffs' claims against them.

17. Plaintiffs allege that this Court has jurisdiction over the Amended Complaint pursuant to 28 U.S.C. § 1334. (Amended Complaint, ¶ 4). 28 U.S.C. § 1334(a)-(b) provides this

[3] The Allonge was also endorsed by Michele Morales, as Manager of Sales and Acquisitions for Emax Financial Group, LLC, to pay to the order of Residential Funding Corporation, n/k/a Residential Funding Company, LLC.

Court with jurisdiction over civil proceedings arising under, arising in or related to cases under the Bankruptcy Code.

18. Neither Ms. Faber, nor MERS, nor the Plaintiffs are ResCap Debtors in the Bankruptcy Case. Furthermore, a favorable ruling against Ms. Faber or MERS has no conceivable effect on the ResCap Debtors or their estates. Thus, this Court lacks subject matter jurisdiction over the Plaintiffs' Amended Complaint as it pertains to Ms. Faber and MERS, and the Amended Complaint is due to be dismissed in its entirety as to both Ms. Faber and MERS.

II. Rule 12(b)(4) Insufficient Process

a. Standard

19. Rule 12(b)(4) provides that an a action may be dismissed for insufficient process. "Objections to sufficiency of process under Fed. R. Civ. P. 12(b)(4) must identify substantive deficiencies in the summons, complaint or accompanying documentation." *Gianatasio v. D'Agostino*, No. 11 Civ. 3095, 2011 U.S. Dist. LEXIS 126809, at *6 (S.D.N.Y. Nov. 2, 2011) (citing *Hilituras Miel, S.L. v. Republic of Iraq*, 573 F. Supp. 2d 781, 796 (S.D.N.Y. 2008)).

b. Argument

20. The Amended Complaint is due to be dismissed because Defendants Ms. Faber and MERS did not receive sufficient process.

21. Plaintiffs did not serve Ms. Faber or MERS with a copy of the summons and Amended Complaint, and Plaintiffs also failed to provide a certificate of service required by Local Rule 9078-1. Ms. Faber and MERS contend that the summons, complaint or accompanying documentation are substantially deficient in all respects because served copies are nonexistent. Because Plaintiffs failed to provide sufficient process, the Court should dismiss the Amended Complaint as to Ms. Faber and MERS.

III. Rule 12(b)(5) Insufficient Service of Process

a. Standard

22. Rule 12(b)(5) provides that the court may dismiss an action for insufficient service of process. "[W]hen a defendant moves to dismiss under Rule 12(b)(5), the plaintiff bears the burden of proving adequate service." *Dickerson v. Napolitano*, 604 F.3d 732, 752 (2d Cir. 2010) (quoting *Burda Media, Inc. v. Viertel*, 417 F.3d 292, 298 (2d Cir. 2005)).

b. Argument

23. This Court should dismiss the Amended Complaint as it relates to Ms. Faber and MERS because service of process was insufficient.

24. Plaintiffs did not serve Ms. Faber or MERS with a copy of the summons or Amended Complaint, and Plaintiffs also failed to provide a certificate of service required by Local Rule 9078-1. Because Ms. Faber and MERS were not properly served with process, the Amended Complaint is due to be dismissed as to both Ms. Faber and MERS.

IV. Rule 12(b)(6) Failure to State a Claim

a. Standard

25. Rule 12(b)(6) provides that an action may dismissed for failure to state a claim upon which relief can be granted. The court must accept the plaintiff's factual allegations as true, drawing all reasonable inferences in the plaintiff's favor. *Bernheim v. Litt*, 79 F.3d 318, 321 (2d Cir. 1996). The Court's review is limited to "the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007).

26. To survive a motion to dismiss pursuant to Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). If, as a matter of law, "the complaint cannot state any set of facts that would entitle the plaintiff to relief," a claim should be dismissed. *See Cal. Pub. Emps.' Ret. Sys. v. N.Y. Stock Exchange, Inc. (In re NYSE Specialists Sec. Litig.)*, 503 F.3d 89, 95 (2d Cir. 2007).

27. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations omitted). A plaintiff must allege a factual predicate concrete enough to warrant further proceedings. *See, e.g., DM Research v. Coll. of Am. Pathologists*, 170 F.3d 53, 55-56 (1st Cir. 1999). The mere "possibility that a plaintiff might later establish some set of undisclosed facts to support recovery" is insufficient to survive a Rule 12(b)(6) challenge. *Twombly*, 550 U.S. at 562 (internal quotation marks and brackets omitted).

28. Bald assertions, subjective characterizations, and legal conclusions are not entitled to the assumption of truth. *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1088, 1092 (2d Cir. 1995). A court considering a motion to dismiss may disregard conclusory allegations and judge the complaint only on well-pleaded factual allegations. *Starr v. Sony BMG Music Entm't*, 592 F.3d 314, 321 (2d Cir. 2010); *see also Papasan v. Allain*, 478 U.S. 265, 286 (1986) (On a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation."). As noted by the United States Supreme Court:

> Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not

> unlock the doors of discovery for a plaintiff armed with nothing more than conclusions . . . . [O]nly a complaint that states a plausible claim for relief survives a motion to dismiss . . . . Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires a reviewing court to draw on its judicial experience and common sense . . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]" – "that the pleader is entitled to relief."

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (citations omitted).

29. Although complaints drafted by *pro se* plaintiffs are to be "construed liberally," claims asserted by *pro se* plaintiffs must nonetheless be supported by specific and detailed factual allegations sufficient to provide the court and the defendant with "a fair understanding of what the plaintiff is complaining about and . . . whether there is a legal basis for recovery." *Iwachiw v. N.Y. City Bd. of Elections*, 126 Fed. Appx. 27, 29 (2d Cir. 2005) (citations omitted).

b. Argument

30. The Amended Complaint does not state a claim upon which relief may be granted against Ms. Faber or MERS, and pursuant to Rule 12(b)(6), the Amended Complaint is due to be dismissed in its entirety as to both Defendants.

i. Plaintiffs Have Failed to Plead Any Claims Whatsoever Against Ms. Faber.

31. Plaintiffs make no specific allegations against Ms. Faber. The Amended Complaint makes no mention of Ms. Faber other than naming her as a defendant. There certainly are no allegations regarding Ms. Faber's conduct, although an exhibit contains her signature on an endorsement of the Note. (*See* Amended Complaint, ¶ 15 and Exhibit C.).

32. Plaintiffs generally reference "Defendants" in Paragraphs 26 and 27 of the Amended Complaint regarding their claims regarding a "fraudulent scheme," robo-signing, and

emotional distress. However, such generalized assertions are insufficient under the *Iqbal/Twombly* standard because Ms. Faber and the other defendants cannot reasonably know which of the eleven named defendants the Plaintiffs are referring to.

33. The Plaintiffs have not pled any set of facts that would support a claim against Ms. Faber. Accordingly, the Amended Complaint is due to be dismissed with respect to Ms. Faber.

ii. Plaintiffs Have Failed to Plead Any Claims Whatsoever Against MERS.

34. Plaintiffs do not make any specific allegations against MERS. The Amended Complaint simply names MERS as a defendant, briefly describes MERS, and states that MERS was the grantee under the Security Deed. (*See* Amended Complaint, ¶¶ 10, 13 and Exhibits A, B). Additionally, Plaintiffs state that MERS "caused" the assignment of the Security Deed and "purported to assign the mortgage." (*See* Amended Complaint, ¶ 17).

35. Plaintiffs' claims fail under the *Iqbal*/*Twombly* standard. Claims that allege that facts are "purported," without more, are the classic type of claims that are pure speculation and do not meet the "plausibility" standard. *See, e.g.*, *Scheiner v. Bloomberg*, No. 8 Civ. 9072 (SHS), 2009 U.S. Dist. LEXIS 21176, at *7-8 (S.D.N.Y. Mar. 17, 2009) ("[A]llegations that defendants engaged in non-legislative conduct--that they used 'improper and potentially illegal pressures to intimidate others' (Compl. P 29)--are far too speculative and imprecise 'to state a claim to relief that is plausible on its face.'" (citing *Twombly*, 550 U.S. at 570)); *Capitol Records, Inc. v. Mp3tunes, LLC*, 611 F. Supp. 2d 342, 347 (S.D.N.Y. 2009) ("An allegation that there is a possibility" that something may be true "is too speculative to meet the *Twombly* standard."). Facing such claims, defendants in a lawsuit cannot possibly defend against them, as they do not know why a fact is "purported." In any event, simply assigning a Security Deed is

not a cause of action upon which relief may be granted. Accordingly, these claims are due to be dismissed.

36. Again, Plaintiffs generally reference "Defendants" in Paragraphs 26 and 27 of the Amended Complaint regarding their claims of a "fraudulent scheme," robo-signing, and emotional distress. However, such generalized assertions are insufficient under the *Iqbal/Twombly* standard because MERS and the other defendants cannot reasonably know which of the eleven named defendants the Plaintiffs are referring to.

37. The Plaintiffs have not pled any set of facts that would support a claim against MERS. Accordingly, the Amended Complaint is due to be dismissed with respect to MERS.

CONCLUSION

Because 1) this Court lacks subject matter jurisdiction over Plaintiffs claims against Ms. Faber and MERS, 2) Plaintiffs provided insufficient process, 3) Plaintiffs provided insufficient service of process, and 4) Plaintiffs failed to state a claim upon which relief may be granted against Ms. Faber or MERS, Ms. Faber and MERS respectfully move to dismiss Plaintiffs' Amended Complaint against them in its entirety and with prejudice.

Respectfully submitted this the 12th day of July, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2013, I served upon the following a true and correct copy of the foregoing, along with the attached Notice of Motion and Proposed Order regarding the foregoing, by United States Mail to their regular mailing addresses or by e-mail to their regular e-mail addresses:

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/s/ James P. Watkins
James P. Watkins

Hearing Date and Time: August 21, 2013 at 10:00 AM (ET)
Objection Deadline: August 14, 2013 at 4:00 PM (ET)

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Marion L. Jenkins and Sharon Jenkins, Plaintiffs, *v.* Residential Funding Company, LLC, et al. Defendants.	Adv. Proc. 12-01935 (MG)
In re RESIDENTIAL CAPITAL, LLC, *et al.*, Debtors	Case No. 12-12020 (MG) Chapter 11 Jointly Administered

NOTICE OF MOTION TO DISMISS ADVERSARY PROCEEDING PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND (4)-(6) BY DEFENDANTS JUDY FABER AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

PLEASE TAKE NOTICE that the undersigned filed a *Motion To Dismiss Adversary Proceeding Pursuant To Federal Rules of Civil Procedure 12(b)(1) and (4)-(6)* (the "Motion") on July 12, 2013.

Hearing Date and Time: August 21, 2013 at 10:00 AM (ET)
Objection Deadline: August 14, 2013 at 4:00 PM (ET)

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will take place on **August 21, 2013 at 10:00 AM (ET)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **August 14, 2013 at 4:00 PM (ET)** upon (a) counsel for Defendants Judy Faber and Mortgage Electronic Registration Systems, Inc., Bradley Arant Boult Cummings LLP, One Federal Place, 1819 Fifth Avenue North, Birmingham, AL 35203 (Attention: Christopher L. Hawkins and James P. Watkins); (b) counsel for the Debtors, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attention: Larren M. Nashelsky, Gary S. Lee, Lorenzo, Marinuzzi, Kayvan B. Sadeghi, James A. Newton, and Erica J. Richards); (c) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004 (Attention: Tracy Hope Davis, Linda A. Riffkin, and Brian S. Masumoto); (d) the Office of the United States Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530 (Attention: U.S. Attorney General, Eric H. Holder, Jr.); (e) the Office of the New York State Attorney General, The Capitol, Albany, NY 12224 (Attention: Nancy Lord and Enid N. Stuart); (f) the Office of the U.S. Attorney for the Southern District of New York, One St. Andrews Plaza, New York, NY 10007 (Attention: Joseph N. Cordaro); (g) counsel for Ally Financial Inc.,

Hearing Date and Time: August 21, 2013 at 10:00 AM (ET)
Objection Deadline: August 14, 2013 at 4:00 PM (ET)

Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022 (Attention: Richard M. Cieri, Ray C. Schrock, Stephen E. Hessler); (h) counsel to the Examiner, Arthur J. Gonzalez, Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112; (i) counsel for the committee of unsecured creditors, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attention: Kenneth Eckstein, Thomas Moers Mayer, Douglas H. Mannal, and Jeffrey Trachtman); (j) counsel for Ocwen Loan Servicing, LLC, Clifford Chance US LLP, 31 West 52nd Street, New York, NY 10019 (Attention: Jennifer C. DeMarco and Adam Lesman); (k) Citibank, N.A., 390 Greenwich Street, 6th Floor, New York, NY 10013 (Attention: Bobbie Theivakumaran); (j) Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101 (if by overnight mail, to 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104); and (l) Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281 (Attention: George S. Canellos, Regional Director); (m) special counsel to Wilmington Trust National Association, Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006 (Attention: Sean A. O'Neal and Thomas J. Moloney); (n) counsel for UMB Bank, N.A., Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178 (Attention: James S. Carr and Eric R. Wilson); (o) claims and noticing agent, Kurtzman Carson Consultants, 2335 Alaska Avenue, El Segundo, CA 90245 (Attention: P. Joe Morrow); (p) counsel to Wilmington Trust, N.A., Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154 (Attention: Walter H. Curchack, Vadim J. Rubinstein, and Debra W. Minoff); (q) co-counsel to ad hoc group of junior secured noteholders, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005 (Attention: Gerard Uzzi); (r) Wells Fargo Bank, N.A., P.O. Box 98, Columbia, MD 21046 (Attention: Corporate Trust Services – GMACM Home Equity Notes 2004 Variable Funding Trust).

Hearing Date and Time: August 21, 2013 at 10:00 AM (ET)
Objection Deadline: August 14, 2013 at 4:00 PM (ET)

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written objection to the relief requested in the Motion, the Bankruptcy Court may deem any opposition waived, treat the Motion as conceded, and enter an order granting the relief requested in the Motion without further notice or hearing.

Respectfully submitted this the 12th day of July, 2013.

/s/ James P. Watkins

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James P. Watkins, Esq.
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EXHIBIT 1

Proposed Order

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Marion L. Jenkins and Sharon Jenkins, Plaintiffs, *v.* Residential Funding Company, LLC, et al. Defendants.	:	Adv. Proc. 12-01935 (MG)
In re RESIDENTIAL CAPITAL, LLC, *et al.*, Debtors	:	Case No. 12-12020 (MG) Chapter 11 Jointly Administered

ORDER GRANTING MOTION TO DISMISS ADVERSARY PROCEEDING PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND (4)-(6) BY DEFENDANTS JUDY FABER AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

This matter came before the Court on the *Motion To Dismiss Adversary Proceeding Pursuant To Federal Rules Of Civil Procedure 12(b)(1) And (4)-(6) By Defendants Judy Faber And Mortgage Electronic Registration Systems, Inc.* (the "Motion to Dismiss") filed by defendants Judy Faber ("Ms. Faber") and Mortgage Electronic Registration Systems, Inc. ("MERS," and together with Ms. Faber, the "Defendants").

Having considered the arguments of Defendants in the Motion to Dismiss; and upon consideration of sufficient notice of the Motion to Dismiss having been given; and plaintiffs Marion L. and Sharon Jenkins (collectively, the "Plaintiffs") having the opportunity to object and be heard; and for good cause shown, the Court hereby **ORDERS** that:

1. The Motion to Dismiss is GRANTED, and the Plaintiff's complaint is dismissed in its entirety and with prejudice as to Defendants Ms. Faber and MERS.

Dated: August __, 2013
New York, New York

_____
THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE