IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONNA MOORE, FRENCHOLA HOLDEN, and KEITH MCMILLON, individually and on behalf of all others similarly situated, Plaintiffs, v. GMAC MORTGAGE, LLC, GMAC BANK and CAP RE OF VERMONT, INC., Defendants.	Civil Action No. 2:07-cv-04296-PD

DECLARATION OF EDWARD N. CAHN
IN SUPPORT OF FINAL APPROVAL OF CLASS SETTLEMENT

I, EDWARD N. CAHN, declare:

1. I served from 1975 until 1998 as a federal judge of the United States District Court for the Eastern District of Pennsylvania, and served as Chief Judge for the last five of those years. Since retiring as a federal judge, I have been affiliated with the Blank Rome LLP firm, where I have focused on serving parties and courts as a mediator, arbitrator, special master, and in related capacities. I have mediated over 1,100 separate controversies. For the last several years, I have served as the neutral mediator in the above-captioned action ("*Moore*"). I submit this declaration in support of the pending motion for final approval of the class settlement in *Moore*. I make these statements based upon my personal knowledge, observation of the parties,

and independent judgment. If called upon as a witness to testify about the contents of this declaration, I could and would competently do so.

2. Beginning over four years ago, I presided over and facilitated extensive, spirited, and principled settlement negotiations among the parties in this matter. These included at least five in-person mediation sessions, each of which was attended by numerous representatives from each party. Most of those sessions lasted many hours, if not all day. There was also considerable communication, both orally and in writing, with and between the parties before and after each of those in-person sessions. In total, I have committed over 75 hours to the mediation of the *Moore* case.

3. The first in-person mediation session was held on April 8, 2010. The session was attended by a team of Class Counsel, led by Edward Ciolko of Kessler Topaz Meltzer & Check, LLP, who were in contact with and had complete authority to act on behalf of all Plaintiffs. It was also attended by a team of defense counsel, led by Marc Durant of Durant & Durant LLP and Michael Agoglia of Morrison Foerster LLP, along with client representatives. Prior to that mediation session, the parties engaged in extensive exchanges of information, including about reinsurance claims paid, reinsurance agreement commutations, actuarial estimations, and class size and contours. The parties provided thorough confidential mediation statements including extensive case related materials and briefing to aid in my preparation for the mediation. Further, during the course of the mediation, the parties exchanged information and analyses regarding their respective settlement positions, including information regarding damages. The parties did not reach a settlement at that juncture.

4. Following the initial mediation session, I participated in, or was otherwise made aware of, the parties' continued attempts to resolve *Moore*, including through numerous

telephone calls, emails, and other correspondence. The parties agreed to attend a second mediation session on June 17, 2011. Prior to this session, the parties provided for my review recent filings with the Court which included briefing on Plaintiffs' motion for class certification and Defendants' motion for summary judgment along with the respective expert reports submitted in support of the motions. Additionally, each party sent me confidential letters setting forth their current assessment of the litigation. Despite these efforts, the parties did not reach an agreement to settle *Moore* at this session.

5. Further mediation sessions were held with me on November 29, 2012, January 14, 2013, and June 21, 2013. Prior to the November 29, 2012 mediation session, there was an additional exchange of factual information relevant to a potential settlement of the matter. I was also informed that the ultimate parent of Defendants GMAC Mortgage and Cap Re – Residential Capital, LLC ("Res Cap") – and Defendant GMAC Mortgage had filed for bankruptcy under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. The Res Cap bankruptcy certainly complicated matters in terms of reducing considerably the amount of resources available to settle *Moore*.

6. While the last in-person mediation sessions did not result in a settlement being reached within the sessions themselves, they created the structure for the parties to conclude multi-party settlement negotiations involving their respective bankruptcy counsel. I was kept apprised of the progress of continuing negotiations and was regularly asked by the parties to provide additional guidance. The parties ultimately reached an agreement in principle to resolve *Moore* on a class basis on October 22, 2013, which I reviewed at the time.

7. It was clear through the parties' submissions and communications (building on my past efforts and interactions with counsel)[1], that counsel for both the Plaintiffs and the Defendants were experienced in complex litigation generally and RESPA actions specifically, including those closely analogous to the instant one. They were very well versed in the facts and legal issues specific to the *Moore* action, and remained vigorous advocates for their respective positions throughout the mediation. I can say without hesitation that the settlement discussions were unquestionably conducted at all times in good faith and at arm's length.

8. It is my opinion that the $6.25 million common fund settlement provides a substantial recovery for the class. Defendants had real, credible, and, in some instances, persuasive arguments that the class should receive nothing because they could not prevail at trial, or even survive summary judgment motion practice. For example, Defendants had paid and were continuing to pay tens of millions of dollars in reinsurance claims. Further, while the Third Circuit has provided some guidance, exactly how to measure damages at the end of the day was more than an open question. Lastly, with Res Cap's bankruptcy filing, it became clear that even if Plaintiffs were ultimately successful in their claims and obtained a judgment against Defendants, it might be at least substantially uncollectable, if not barred by the effective release of claims by operation of the final bankruptcy proceedings.

9. Further, given the reputation and experience of Plaintiffs' counsel, and the extensive investigation and work done up to and through settlement, Plaintiffs' request of 30% of the common fund in fees is appropriate. I have presided over cases where class counsel have asked for a significantly higher percentage of a common fund. Given the result achieved,

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[1] For instance, Plaintiffs' counsel here were also plaintiffs' counsel in *Alston et al. v. Countrywide, et al.*, No. 2:07-cv-03508-JS, an analogous matter where I served as the neutral mediator.

contingent nature of the representation, novelty and complexity of the claims, and very real chance of receiving no payment at all, this percentage is, in my opinion, fair and reasonable.

10. To conclude, this settlement was by no means a foregone conclusion, even after other parties had settled similar litigation years earlier. At all times, it was negotiated fairly, intensively, and at arm's length. Counsel involved were experienced in general and very knowledgeable regarding the issues in *Moore* in particular. There were very real risks posed by litigating this matter to judgment, including that the class would not prevail in any respect, or that even if they prevailed, the Res Cap bankruptcy would have eliminated any chance of actual recovery. I respectfully offer these thoughts for the Court's consideration in determining whether the settlement is fair, adequate and reasonable under the governing standards.

11. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of September 2014 in Philadelphia, Pennsylvania.

Edward N. Cahn

Edward N. Cahn

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF.

/s/ Edward W. Ciolko
Edward W. Ciolko