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, vs. GMAC MORTGAGE, LLC, GMAC BANK and CAP RE OF VERMONT, INC., Defendants.	Civil Action No. 2:07-cv-04296-PD

DECLARATION OF EDWARD W. CIOLKO IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF PLAN OF ALLOCATION, APPOINTMENT OF CLASS REPRESENTATIVES, AND APPOINTMENT OF LEAD CLASS COUNSEL AND CLASS COUNSEL, AND UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION COSTS, AND CASE CONTRIBUTION AWARDS FOR THE NAMED PLAINTIFFS

I, EDWARD W. CIOLKO, declare as follows:

1. I am a partner with the law firm of Kessler Topaz Meltzer & Check, LLP ("KTMC"), Lead Class Counsel in this Action.[1] I am personally involved in the prosecution of this matter and have been since its inception and submit this Declaration in support of Plaintiffs' (1) Unopposed Motion for Final Approval of Settlement, Certification of Settlement Class, Approval of Plan of Allocation, Appointment of Class Representatives, Appointment of Lead Class Counsel, and (2) Class Counsel and Plaintiffs' Unopposed Motion for Award of Attorneys'

[1] All capitalized terms not otherwise defined in this Declaration shall have the meaning ascribed to them in the Settlement Agreement ("Settlement" or "Settlement Agreement") executed as of December 10, 2013. A true and correct copy of the Settlement Agreement, which contains numerous sub-parts, including the proposed Final Approval Order, is attached hereto as Exhibit 1.

Fees, Reimbursement of Litigation Costs and Case Contribution Award for the Named Plaintiffs. The information set forth in this Declaration is based upon my personal knowledge, as well as, information shared with me by my co-counsel in this litigation.

2. I am a graduate of Georgetown University Law Center, admitted to practice before the United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Ninth and Eleventh Circuits, the District of Columbia Court of Appeals, the United States Supreme Court, and the United States District Courts for the Northern District of Illinois, the Eastern District of Wisconsin, the District of Colorado, and the Eastern District of Michigan. I am admitted *pro hac vice* to the District Court for the Eastern District of Pennsylvania in connection with the above-captioned matter.

3. This Declaration is submitted in support of a settlement, for that purpose only, and is inadmissible in any subsequent proceeding, other than in connection with the Settlement of this Action. This Declaration and the statements contained herein are without prejudice to Plaintiffs' position on the merits in the event that the Settlement is not approved by the Court.

4. Before this case was transferred to the Eastern District of Pennsylvania on October 12, 2007, Case No. 07-cv-04296-PD (E.D. Pa.) (the "Action"), KTMC filed an identical case against the same Defendants on March 7, 2006 in the United States District Court for the Northern District of California, styled *Badesha v. GMAC Mortgage, LLC*, Case No. 06-cv-27817-JCS (N.D. Cal.).

5. The Settlement provides that Defendant Cap Re will pay a total of $6,250,000 (Six Million Two Hundred Fifty Thousand U.S. Dollars) (the "Settlement Fund") to the Settlement Class which consists of "all borrowers with residential mortgage loans originated and/or acquired by GMAC Mortgage, Ally Bank and/or their affiliates on or after January 1,

2004 with private mortgage insurance that was reinsured by Cap Re (the "Class"), in exchange for Named Plaintiffs and all Participating Class Members releasing claims against Defendants that: (a) concern the reinsurance of private mortgage insurance on any Reinsured Loan; or (b) arise from any transaction or occurrences related to the reinsurance of primary mortgage insurance that was the subject of this Action.

6. KTMC has taken the lead in prosecuting this Action since its inception, working in conjunction with the law firms of Brahmson, Plutzik, Mahler & Birkhaeuser, LLP ("BPMB"), Berke, Berke & Berke ("BBB"), and Travis & Calhoun, P.C.[2] ("TC") (collectively with KTMC, "Class Counsel").[3] Class Counsel are all experienced attorneys who have litigated a wide variety of complex consumer class action claims.

7. KTMC specializes in complex class action litigation, representing investors, employees and consumers in class actions pending in state and federal courts throughout the United States, including those involving mortgage loan transactions. The firm is composed of over 100 attorneys and a support staff of 100 located in two offices (Radnor, PA and San Francisco, CA) specializing in the prosecution of large, complex class actions nationwide. KTMC is well-regarded nationally for their successful representation of clients. Because of its track record of impressive results, courts have not hesitated to appoint KTMC as class counsel or interim class counsel in numerous complex mortgage-related consumer protection actions, such as *Alston v. Countrywide Fin. Corp.*, No. 07-cv-03508 (E.D. Pa.) ("*Alston*"), *Alexander v. Washington Mutual, Inc.*, No. 07-vc-04426-TON (E.D. Pa.) ("*Alexander*"), and *Liguori v. Wells Fargo & Company*, No. 08-cv-00479-PD (E.D. Pa.) ("*Liguori*"), three analogous cases alleging

[2] Travis & Calhoun, P.C. ("TC") was formerly named Travis, Calhoun & Conlon, P.C.

[3] Kessler Topaz Meltzer & Check, LLP ("KTMC") BPMB, BBB, and TC were preliminarily appointed as Class Counsel. *See* Dkt. No. 283. The Court further appointed KTMC as Lead Class Counsel. *Id*.

violations of § 8 of the Real Estate Settlement Procedures Act of 1974 ("RESPA"), as well as others.

8. In addition, courts have appointed KTMC in a wide variety of complex class actions, such as *In re Chesapeake Energy Corp. 2012 ERISA Class Litig.*, 286 F.R.D. 621, 624 (W.D. Okla. 2012), where the Court specifically noted "KTMC is one of the most experienced ERISA litigation firms in the country, with particular expertise in the area of ERISA breach of fiduciary class actions," and that "in addition to its extensive litigation experience, KTMC has also successfully engaged in extensive, intricate and successful settlement negotiations and mediations involving complex legal and factual issues involving ERISA claims, resulting in large recoveries for affected classes," and *In re Sadia, S.A. Secs. Litig.*, 269 F.R.D. 298, 310 (S.D.N.Y. 2010) where the Court noted that "[KTMC] [has] extensive experience in securities litigation and [has] successfully prosecuted numerous securities fraud class actions on behalf of injured investors [and are] qualified, experienced and able to conduct the litigation." Recently, KTMC served as lead class counsel in *Alston* where it achieved a $34 million settlement on behalf of Countrywide mortgage borrowers, in *Alexander* where it achieved a $4 million settlement on behalf of Washington Mutual mortgage borrowers, and in *Liguori* where it achieved a $12.5 million settlement on behalf of Wells Fargo mortgage borrowers, and also recently served as co-lead class counsel in *In re: National City Corporation Securities, Derivative & ERISA Litigation*, No. 08-nc-7000 (S.D. Ohio) where it achieved a $43 million settlement on behalf of retirement plan participants. During its successful history, the firm has recovered over a billion dollars for class members. The firm has developed a nationwide reputation for excellence and is able to manage all aspects of complex class action litigation. *See* Firm Resume of KTMC, attached hereto as Exhibit 2.

9. Lead Class Counsel engaged the firm of Lowenstein Sandler LLP ("Lowenstein") as bankruptcy counsel to provide expert advice and assist with protecting Class Members' claims in this Action to the extent that the Res Cap Bankruptcy Proceedings[4] could affect their ability to proceed with their claims. Lowenstein Sandler's participation and active involvement in all aspects of the bankruptcy related events were crucial to the successful resolution of this Action and played a significant part in preserving assets to be used to pay the Settlement Fund. *See* Firm Resume of Lowenstein Sandler LLP, attached hereto as Exhibit 3.

10. The skill and expertise of Class Counsel in this Action is best demonstrated by the fact that they obtained a multi-million dollar settlement in this case despite the complexity of the claims involved, the precarious financial position of the Defendants, and the quality and resources of Defendants' counsel -- lawyers from highly skilled and respected law firms.

11. Defendants are represented in this case by, *inter alia*, Marc Durant of Durant and Durant LLP; Michael J. Agoglia of Morrison and Foerster LLP; and Richard G. Haddad of Otterbourg P.C., all of whom are highly experienced and competent attorneys who vigorously and aggressively contested the claims asserted in this litigation.

12. BPMB, BBB, and TC, are also experienced and well-recognized attorneys with substantial experience in prosecuting both individual and class claims in consumer, RESPA, mortgage lending and lending discrimination cases. The firm resumes of BPMB, BBB, and TC, attached hereto as Exhibits 4, 5 and 6 respectively, reflect the depth and substance of that experience.

[4] The Res Cap Bankruptcy Proceedings refers to the voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") that GMAC and several affiliates and subsidiaries (the "Debtors"), not including Ally Bank or Cap Re, filed on May 14, 2012 commencing Chapter 11 proceedings that were jointly administered under the case caption *In Re Residential Capital, LLC*, Case No. 12-12020.

13. In my opinion, based on my experience as outlined above prosecuting similar cases, this Settlement warrants the Court's final approval. The road here was difficult – right up to the bitter end (*i.e.* – this week). Throughout the litigation, Defendants raised a host of legal and factual defenses, some of which, if successful, could have either ended Plaintiffs' case entirely or significantly reduced the potential recovery.

14. Obtaining a settlement amount mutually satisfactory to the Parties was made all the more difficult because ultimately there were very limited funds available for a settlement. In particular, the settlement was achieved against the backdrop of and subject to the substantial risks and hurdles created by the ResCap Bankruptcy Proceedings which were initiated during the pendency of the litigation. As a result of the bankruptcy and the plan of liquidation ultimately presented to the Bankruptcy Court for approval, the only non-debtor Defendant remaining at the time of settlement was Cap Re.[5] Moreover, because no insurance policies were available to cover litigation costs and/or settlement, this settlement is being funded exclusively by Cap Re, pursuant to terms expressly negotiated by Plaintiffs, lead counsel and bankruptcy counsel for inclusion in the *Chapter 11 Plan Proposed by Residential Capital, LLC et. al. and the Official Committee of Unsecured Creditors* (the "Chapter 11 Plan") and approved by the bankruptcy court.

15. The Settlement provides a recovery to borrowers on each of 122,963 Reinsured Loans[6] included in the challenged reinsurance arrangements on a *pro rata* basis. In filing for preliminary approval of the Settlement, Plaintiffs estimated the number of Reinsured Loans (and

[5] Cap Re, as an individual indirect subsidiary of Residential Capital, LLC, did not file for Chapter 11 relief.

[6] For purposes of distributing the Settlement Fund, a Class Member is a person or persons "obligated on a Reinsured Loan," *see* Settlement Agreement, ¶ 1.6, but, the Class ***size*** – *i.e.* the "number" of individual payments to ultimately be made to the Class – is determined by the number of Reinsured Loans.

hence number of Class Members) to be around 66,000 based on information/discovery obtained during the litigation, including during settlement negotiations.[7] Once the discrepancy between the class size estimate at the time of preliminary approval and the actual class size ascertained in preparing the Class Member List came to light, the Parties met and conferred regarding the discrepancy, ultimately resolving all issues related to the number of Reinsured Loans. In particular, the additional number of Class Members are a result of the inclusion of individuals who Defendants would assert did not meet RESPA's one year statute of limitations and are not entitled to "equitable tolling," *i.e.*, Defendants would assert their claims are untimely if litigation were to continue. Class Counsel was aware that the addition of "equitable tolling" Class Members would likely increase the ultimate size of the class – but the ultimate number was a bit larger than envisioned. Indeed, Plaintiffs' request for additional time to file their final approval papers was predicated on a potential material disagreement with Defendants regarding the contours of the ultimate Class size and related aspects of the terms of the Settlement. Plaintiffs' concerns have been addressed and they can confirm that, even given the enlarged Class – indeed in part because these folks were included - the proposed Settlement is fair, reasonable, adequate, and in the best interest of the Class, as it provides for an immediate and meaningful recovery.

16. Indeed, Class Counsel has attempted to negotiate for inclusion of the "equitable tolling" members of the class in every PMI reinsurance kickback case settlement, sometimes successfully, sometimes unsuccessfully. *See Liguori, et al. v. Wells Fargo Bank, N.A., et al.*, No. 08-cv-00479, Dkt. No. 186, Final Approval Order (E.D. Pa. February 7, 2013) ("*Ligouri* Final Approval Order") (only "timely" – under RESPA's statute of limitations -- portions of the proposed litigation class received a benefit). The fact that Class Counsel was able to do so

[7] In preparing the Class Member List Defendants ascertained the exact number of Reinsured Loans. *See* Declaration of Todd Underhill, attached hereto as Exhibit 10.

successfully here is a matter of pride, and allows the greatest amount of Class Members to benefit from the Settlement. This achievement is underscored by the fact that an appeal of a denial of equitable tolling in a directly analogous case is currently on appeal to the Third Circuit in *Riddle v. Bank of America Corp.*, No. 12-cv-01740 (E.D. Pa.). Further, given the costs and uncertainties involved in gathering class data from various and sundry sources, some bankrupt, as set forth in the declaration of Todd Underhill (attached hereto as Exhibit 10) and given the amount to be received by each claimaint, Class Counsel believed the fairest approach to allocation of proceeds would be *pro rata*. A similar *pro rata* distribution plan was approved in *Alexander v. Washington Mutual Inc.*, No 07-cv-4426, 2012 WL 6021098 (E.D. Pa. Dec. 4, 2012) ("*Alexander* Final Approval Order").

17. In recommending the Settlement, Class Counsel considered the risks of establishing liability and damages and managing a potential trial on the merits, as well as the fact that the Class itself had yet to be certified and the real possibility that, ultimately, despite Class Counsel's best efforts, there might be no recovery for the Class, especially against the backdrop of the Res Cap Bankruptcy Proceedings.

18. KTMC has effectively and efficiently collaborated with Class Counsel to vigorously pursue the litigation. Among other things, the work performed for nearly seven years that resulted in the proposed Settlement presented for Final Approval included the: investigation and filing of original and amended pleadings; defeating and resolving dispositive motions; presenting, addressing and resolving disputes regarding party and third-party discovery; performing analyses of loan data and application of actuarial and accounting precepts; pursuing discovery through the gathering, reviewing, and analyzing of a substantial volume of documents and data produced by Defendants and numerous third-parties (including the mortgage insurance providers, actuarial firms, management companies and banks); consulting with experts; taking

and defending depositions; participating in multiple mediation sessions and ongoing detailed, thorough and spirited settlement negotiations which included the sharing and analysis of data relating to the claims asserted; and following the bankruptcy of the ultimate parent of defendants GMAC Mortgage, LLC and Cap Re of Vermont Inc. (*see* n. 4) engaged in extensive litigation and negotiations to make sure assets would be available for the benefit of the Settlement Class.

19. As fully set forth in Plaintiffs' Memorandum of Law in Support of Motion for Final Approval of Settlement, Certification of Settlement Class, Approval of Plan of Allocation, Appointment of Class Representatives, and Appointment of Lead Class Counsel and Class Counsel (the "Final Approval Memorandum"), the proposed Settlement and allocation plan, measured by all criteria for approval of class action settlements, clearly satisfy the relevant legal standards and should be approved by the Court as fair, reasonable, and adequate.

20. In addition, Lead Class Counsel respectfully submits that the request for approval of attorneys' fees in the amount of $1,875,000 (30% of the Settlement Fund), reimbursement of $454,097.14 in litigation expenses, and Case Contribution Awards in the amount of $5,000 each for the Named Plaintiffs is fair and reasonable and should be approved by the Court. As fully explained in the Memorandum of Law in Support of Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses and Case Contribution Awards for the Named Plaintiffs (the "Fee Memorandum"), Class Counsel have collectively incurred a lodestar of $3,458,963.20 representing over 7,400 hours devoted to the prosecution of this Action, working on a contingent basis without any compensation to date. Approval of the fee based upon the lodestar of all Class Counsel would constitute a "fractional" multiplier of 0.54.

21. In view of the foregoing, and as discussed in detail both below and in the Final Approval Memorandum, I submit that: (1) the Settlement is a significant result and the best

result achievable, particularly given the difficulties of prosecuting the instant Action to trial, and is fair, reasonable, and adequate and thus, worthy of final approval by the Court; (2) the Court should certify the Class for purposes of the Settlement; (3) the Court should approve the Plan of Allocation described in the Settlement Agreement; and (4) the requested fee award, request for reimbursement of litigation costs and Case Contribution Awards for the Named Plaintiffs should be approved.

II. LITIGATION HISTORY

22. The history of this matter is set forth in detail in the Final Approval Memorandum. *See* Final Approval Memorandum, Section II.B.

23. Class Counsel conducted an extensive investigation and fact review of the matters at issue in this case before filing the complaint in this matter. Plaintiffs: (1) consulted with industry and academic consultants; (2) conducted extensive research into the bases of their claims including a comprehensive review of publicly available information from such resources as corporate filings with the Securities and Exchange Commission and other state and federal agencies, professional materials, and industry journals generally relied upon by industry experts in the area of insurance, reinsurance, mortgage banking and accounting for which a subscription was required; (3) interviewed Class Members; and (4) reviewed documents provided to them by Named Plaintiffs and Class Members.

24. The Parties engaged in extensive motion practice in this Court. Class Counsel opposed Defendants' motions to dismiss and for summary judgment, and filed a motion for class certification.

25. Class Counsel engaged in significant discovery, including and as discussed more fully in the Final Approval Memorandum, Section II.C:

- serving Requests for Production of Documents on each Defendant;
- serving third party subpoenas on seven mortgage insurance providers that entered into captive reinsurance agreements with Defendant Cap Re; and
- serving interrogatories on all Defendants, who in turn, served Requests for Production of Documents on Plaintiffs.

Additionally, the Parties also engaged in class certification discovery focused on the Court's question as to whether Defendants' reinsurance arrangements actually transferred risk. To that end, Plaintiffs noticed and took several depositions, including depositions of Defendants' Rule 30(b)(6) witnesses, several third-parties, including Defendants' actuary, and third-party mortgage insurance providers.

III. THE PROPOSED SETTLEMENT

26. The Parties first entered into formal negotiations to settle this matter in April 2010 with the assistance of the Honorable Judge Edward Cahn (Ret.), an experienced and highly respected mediator and arbitrator with extensive experience in high level litigation disputes and expertise with the issues raised in the Action. The initial mediation took place on April 8, 2010. Although the Parties did not resolve their dispute during the first mediation session, they continued to attempt to resolve this case through numerous telephone calls, emails and correspondence. The Parties held additional mediation sessions, again with the assistance of Judge Cahn, on June 17, 2011, November 29, 2012, January 14, 2013, and June 21, 2013, and ultimately executed the formalized Settlement Agreement on December 10, 2013.

27. Against the back-drop of the ResCap Bankruptcy Proceedings and with the benefit of the previous attempts at mediation, it became clear that the complex and difficult issues attendant to the ResCap Bankruptcy Proceedings required a creative resolution of the Action. In the summer of 2013, Lead Class Counsel and bankruptcy counsel for the Plaintiffs

and counsel for Defendants, as well as counsel to the Committee, became involved in the negotiation of the resolution of this Action outside of the mediations originally conducted before Judge Cahn.

28. The multi-party negotiations were extraordinarily difficult and made even more challenging because any settlement ultimately had to take into account the parameters of the global settlement embodied in the plan support agreement ("PSA") and the Plan. In particular, the global settlement (i) fixed the amount to be contributed by Ally Financial, Inc. and its direct and indirect non-Debtor affiliates (collectively, "AFI") (which would include Ally Bank), but did not allocate a percentage of the contribution to any particular Borrower or non-Borrower-related claim, including the Class Claim, (ii) provided a full release to Ally Bank and Cap Re, (iii) channeled the Class Claim to a class under the Plan comprised of all Borrower claims, and (iv) attempted to cap the distribution on account of all Borrower-related claims at approximately $57 million to be allocated among approximately 3,000 Borrower Claims. At the same time, GMAC Mortgage was a liquidating debtor in Chapter 11 proposing only a partial payment on the dollar to its creditors, and Cap Re's prospects were uncertain.

29. In sum, were it not for the Settlement now before this Court for final approval, the risks to the Class were daunting. First, the merits of the Action would have potentially been litigated in two separate courts, this Court and the Bankruptcy Court. And even if successfully litigated in the Bankruptcy Court, a fund capped at $57 million was created for the resolution of ***all borrower claims pursuant to the Plan of Liquidation***, which claims were alleged to be in the billions of dollars. Therefore, any judgment would have been subject to significant dilution by other allowed borrower claims absent a successful challenge to the size of that fund. Finally, the carve-out of Cap Re from the third party releases contained in the Plan of Liquidation was only

negotiated for the benefit of this Class through the Settlement. Absent the Settlement, Plaintiffs would have been compelled to object to confirmation of the Plan of Liquidation despite the fact that the Plan was mediated through a then-sitting bankruptcy judge with the eventual overwhelming support of creditors representing all major creditor constituencies and billions of dollars in claims. Moreover, even if a challenge to the Cap Re release was successful, Cap Re was in run-off and the class would have been competing with other creditors of Cap Re for a dwindling asset pool even if Plaintiffs litigated successfully to judgment. If any one of these myriad of risks were not resolved favorably, the Class would have been faced with little or no recovery.

30. On October 29, 2013, counsel for Plaintiffs submitted a letter to the Court noting that the Parties had reached an agreement in principle to settle the instant Action, which is set forth in the Parties' Settlement Agreement. Dkt. No. 269. Over the course of the subsequent weeks, the Parties worked feverishly to document the agreement embodied in the agreement in principle ("AIP") into the formal Settlement Agreement that is now before this Court. During the course of these negotiations, Ally Bank agreed to the terms of the proposed Settlement and became a signatory to the Settlement Agreement. Finally, on December 10, 2013, on the eve of final arguments on confirmation of the Plan, the Parties executed the Settlement Agreement. On December 11, 2013, the Plan, as amended, was confirmed, and on December 17, 2013, the Plan Effective Date occurred.[8] It should be noted that at the time final arguments on Plan confirmation took place, there were no remaining substantive objections to confirmation of the Plan.

31. The Settlement was achieved through spirited, and at times arduous, arm's length

[8] *See* Order Confirming Second Amended Joint Chapter 11 Plan Proposal, ResCap Bankruptcy Proceedings, BK. Dkt. No. 6065.

negotiations and renegotiations. Given the thorough discovery, contentious litigation, and multiple mediation sessions, the Parties had amassed sufficient information to allow them to adequately assess the risks involved with continued litigation and the evidence which supported their respective positions. Plaintiffs believe that this Settlement represents a fair and reasonable compromise in light of the risks, costs, and uncertainties of continued litigation, especially given that this result was achieved in the context of the ResCap Bankruptcy Proceedings and the distinct possibility that Class Members would not receive any monetary recovery.

IV. THE PROPOSED SETTLEMENT AND PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE

32. The Settlement, which is the product of extensive arm's length negotiations after litigation by the Parties, is fair, reasonable, and adequate, and provides a meaningful recovery for the Class.

33. The Settlement provides that Defendants will pay $6.25 million to the Settlement Class. Under the proposed allocation plan, which is described in Section IV of the Settlement Agreement, Settlement Payments to Participating Class Members will be made by a check mailed to the borrowers on the loan. This allocation method has been approved an implemented in an analogous case. *See Alexander* Final Approval Order, 2012 WL 6021098. In exchange, Plaintiffs and the Settlement Class will dismiss the Action and all related claims, as set forth more fully in the Settlement Agreement.

34. Resolving this case at this juncture allows the Parties to avoid years of continued costly litigation that could result in a judgment or verdict that is less than the recovery under the Settlement, or in no recovery at all.

V. SETTLEMENT ADMINISTRATION

35. On January 24, 2014, Plaintiffs filed their Unopposed Motion for Preliminary

Approval of Class Action Settlement, Preliminary Certification of Settlement Class, Approval of Proposed Class Notice, and Scheduling of a Final Approval Hearing (the "Preliminary Approval Motion"), which included the proposed form of Class Notice.[9] Dkt. No. 272.

36. By Order dated April 29, 2014, the Court granted Plaintiffs' Preliminary Approval Motion. Dkt. No. 283. The Preliminary Approval Order established a schedule for dissemination of the approved form of Class Notice, established the form, manner, and timing of any objections to the Settlement and its terms, and set September 17, 2014 as the date for the Final Approval Hearing. *See* Preliminary Approval Order. *Id.* at ¶ 11.[10]

37. On or around May 20, 2014, GCG received an e-mail from Defendants containing one excel document labeled "Moore Class List CONFIDENTIAL," the excel document contained data for approximately 122,979 properties.[11]

38. Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, The Garden City Group, Inc. ("GCG"), mailed, via First-Class Mail, the Court approved Class Notice to 126,227 Settlement Class Members on June 13, 2014. *See* Affidavit of Jose Fraga, Senior Director of Operations for GCG ("GCG Aff."), attached hereto as Exhibit 7 ¶ 7.

39. For Settlement Class Members for whom Class Notice was returned as undeliverable, the Settlement Administrator took additional steps to perform advanced address

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[9] During the process of drafting the Notice, Lead Class Counsel consulted the Federal Judicial Center "Notice Checklist and Plain Language Guide 2010," attached hereto as Exhibit 8.

[10] In an Order dated April 30, 2014, which amended the Preliminary Approval Order, this Court set August 12, 2014 as the deadline for Class Members to file opt-outs and/or objections to the Settlement. *See* Dkt. No. 284. On July 31, 2014, this Court entered another Order extending the deadline for any Class member to object to any aspect of the Settlement to September 17, 2014, noting any objection postmarked by that day will be deemed timely and will be considered. *See* Dkt. No. 289, attached hereto as Exhibit 9.

[11] *See* Declaration of Todd Underhill Regarding Preparation of Class Member List, attached hereto as Exhibit 10.

searches. The Settlement Administrator then re-mailed Class Notices, via First-Class Mail, to the updated addresses for those Settlement Class Members. *Id* at ¶ 13.

40. To date, 2,204 Class Notices were returned by the United States Postal Service as undeliverable, resulting in a 98.3% Notice delivery success rate. *Id* at ¶ 9.

41. Class Counsel, through GCG, supervised the launching and maintenance of the dedicated Settlement website www.gmacpmisettlement.com, through which Settlement Class Members can: (1) view a summary description of the Action, the Complaint and other case materials; (2) access the Settlement Agreement and related Settlement documents (*e.g.*, Class Notice, Settlement Agreement and Preliminary Approval Order); (3) access a toll-free phone number and email address to use to obtain further information about the Settlement. *See* GCG Aff. at ¶ 11.

42. As of the date of this submission, the website has received 4,433 "hits." *Id* at ¶ 12. Both the website and the Class Notice, which was mailed to Settlement Class Members, included the email address, gmacpmisettlement@ktmc.com, so that any member of the Settlement Class could email Lead Class Counsel with inquiries. As of August 4, 2014, Lead Class Counsel has received and responded to 111 emails from Class Members.

43. In addition to the website and email address, the Class Notice listed a toll free number, 877-899-2980, so that Settlement Class Members could call Lead Class Counsel with questions regarding the Settlement, obtain additional information or request a copy of the Class Notice. The toll-free number contains a pre-recorded message which gives an overview of the both the Settlement and the approval process, as well as provides Settlement Class Members the option to leave a voicemail message. To date, the IVR has received a total of 1,377 phone calls from Settlement Class Members**.** In addition, Lead Class Counsel received and responded to 273

voicemails and 2 calls directly from Class Members.

44. As of August 1, 2014, GCG has received only six (6) "exclusion requests," representing four (4) Reinsured Loans, *i.e.*, opt-outs, from the 122,963 Reinsured Loans.

45. As of the date of this Declaration, no objections to the Settlement have been received by Class Members. As noted *supra*, the deadline for Class Members to file objections is September 17, 2014.[12]

VI. LEAD CLASS COUNSEL KTMC'S LODESTAR AND EXPENSES

46. During the period from inception of this Action through August 5, 2014, Lead Class Counsel KTMC performed 6,563.47 hours of work in connection with this Action. This was a vigorously prosecuted case which involved significant time, *inter alia*, researching, conducting discovery, and briefing discovery, class certification and dispositive issues before the Court, delving into and reviewing complex discovery, taking and defending depositions, consulting with experts and working with bankruptcy counsel. *See* Final Approval Memorandum, Section II, and the Fee Memorandum, Section II. The schedule attached hereto as Exhibit 11 is a summary indicating the amount of time spent by each attorney and paraprofessional of KTMC who was involved in the prosecution of this Action, their time amassed, and the total dollar value to KTMC's time (the "lodestar"). KTMC's lodestar is $2,921,755.20, which is based on the current hourly rates regularly charged by KTMC. The hourly rates for the attorneys and paraprofessionals at KTMC included in Exhibit 11 are the same as the regular current rates charges for their services in non-contingent matters and/or which have been accepted by courts in other complex class actions.

47. The hourly rates utilized by KTMC in computing its lodestar are at or below it

[12] Class Counsel will submit a supplemental brief to the Court prior to the Final Approval Hearing addressing any subsequently-submitted objections.

usual and customary hourly rates charged for RESPA-related cases and other complex litigation. No upward adjustment in billing rate was made, notwithstanding the contingency and risk of the matters involved, the opposition encountered, the preclusion of other employment, the delay in payment, or other factors present in this Action which would justify a higher rate of compensation.

48. The time and services provided by KTMC for which fees are sought in the petition are reflected in contemporaneously maintained records of the firm. All of the services performed by KTMC in connection with this Action were reasonable and necessary in the prosecution of this case. No time is included in the fee petition for work in connection with the fee petition and expense application or accompanying documents, including this declaration and the attached declarations of Class Counsel.

49. KTMC allocated work in this case to maximize efficiency, assigning tasks within the firm and to others involved based on a number of considerations with the goal of minimizing duplication of effort. In addition, KTMC carefully assigned work within the firm and among others involved to minimize fees in the case; thus, senior attorneys did not do the work that could be accomplished by more junior attorneys, and attorneys did not do work that could be completed by paralegals. Further, throughout the litigation, KTMC balanced resources – again, within the firm and among others involved – to ensure that the matter was litigated in the most efficient manner. Had such efforts not been made, the number of hours devoted to the case would have been much higher.

50. Since the inception of this case, in accordance with normal business practices, KTMC has and does maintain detailed and contemporaneous records of time spent by lawyers, law clerks, paralegals and certain personnel on this action. The timekeepers have been and are

required to keep daily time records, both noting amounts of time spent on projects and providing descriptions of that work. These records are then computerized, checked and maintained in databases. These systems provide confidence that the hours reported for this case are accurate.

51. KTMC's hourly rates have been paid by hourly clients and/or separately approved for payment by federal and state courts in other class and derivative litigations for many years and throughout the time this litigation has been pending.

52. As noted above, KTMC is a Philadelphia-based firm, with an additional office in San Francisco, and its rates are in line with the rates charged by other firms around the country that represent clients in major class action and complex financial cases. In addition, KTMC's rates are comparable to rates charged by counsel with special expertise in complex RESPA, financial, and other class action litigation.

53. KTMC's lodestar figures do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the firm's billing rates.

54. As detailed in the schedule attached hereto as Exhibit 12, KTMC incurred a total of $447,258.18 in unreimbursed litigation expenses in connection with the prosecution of this Action. The expenses incurred by KTMC are reflected on the books and records of the firm. These books and records are prepared from expense vouchers, check records and other materials, and are an accurate contemporaneous recordation of the expenses incurred.

VII. BANKRUPTCY COUNSEL AND CLASS COUNSELS' LODESTAR AND EXPENSES

55. The Declaration on behalf of Lowenstein is attached hereto as Exhibit 13 and includes the firm's lodestar $382,727.00 and expenses $2,360.94 incurred in connection with the prosecution of this Action.

56. The Declaration on behalf of BPMB is attached hereto as Exhibit 14 and includes

the firm's lodestar of $37,754.00 and expenses of $513.76 incurred in connection with the prosecution of this Action.

57. The Declaration on behalf of BBB is attached hereto as Exhibit 15 and includes the firm's lodestar of $49,815.00 and expenses of $3,964.26 incurred in connection with the prosecution of this Action.

58. The Declaration on behalf of TC is attached hereto as Exhibit 16 and includes the firm's lodestar of $66,912.00 incurred in connection with the prosecution of this Action.

VIII. CASE CONTRIBUTION AWARDS TO THE NAMED PLAINTIFFS

59. As set forth in greater detail in the Fee Memorandum, Plaintiffs also respectfully request that the Court grant Case Contribution Awards of $5,000 each to Named Plaintiffs Donna Moore, Frenchola Holden, and Keith McMillion.

60. Federal courts often exercise their discretion under Rule 23(d) and (e) to approve case contribution awards to plaintiffs who instituted and prosecuted an action on the theory that there would be no class-wide benefit absent their suit. The trial court has discretion to recognize the benefit of the Plaintiffs' actions with such an award.

61. Each of the Named Plaintiffs stepped forward at critical junctures of the litigation process and pursued the Settlement Class's interests by filing suit on behalf of the members of the Settlement Class, undertaking the responsibilities attendant with serving as a named plaintiff.

62. Specifically, each Named Plaintiff searched his or her files for relevant records, obtained copies of their mortgage-related documents and provided information to counsel to assist in the preparation and litigation of this case. Plaintiffs Moore and Holden were deposed, and all three Plaintiffs were available for the various mediation sessions/settlement discussions. The Plaintiffs were also consulted and provided input for strategic decisions, including

negotiation and approval of the Settlement terms. In short, the Plaintiffs were extremely active in the case, and devoted a substantial amount of time and energy in assisting in the successful prosecution of this litigation.

63. As detailed in the Fee Memorandum, the foregoing actions performed by the Plaintiffs, and the burdens they assumed as a result, demonstrate their commitment to the case and the Settlement Class, and should be awarded accordingly. *See* Fee Memorandum at Section V.

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

Executed on August 6, 2014

/s/ Edward W. Ciolko
Edward W. Ciolko

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 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