

# **EXHIBIT 10**

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

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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 TODD UNDERHILL  
REGARDING PREPARATION OF CLASS MEMBER LIST**

I, TODD UNDERHILL, declare as follows:

1. I am the Director of eDiscovery for the ResCap Liquidating Trust, (“ResCap”).

In my role as Director of eDiscovery, I am responsible for the development, maintenance, and governance of discovery policies and practices, including overseeing the preservation, collection, processing, and production of electronically stored information and documents for litigation, due diligence, and other purposes. I am authorized to submit this declaration on behalf of Cap Re of Vermont LLC (“Cap Re”) and GMAC Mortgage, LLC (“GMAC Mortgage”) regarding the preparation of the class member list for the settlement of the above-captioned action.

2. Except as otherwise indicated, all statements in this declaration are based upon my personal knowledge, my discussions and correspondence with ResCap employees and current and former employees of Cap Re and GMAC Mortgage, and my review of relevant documents. If called upon as a witness to testify about the contents of this declaration, I could and would competently do so.

3. I have held my current position since December 27, 2013. Previously, I was the Director of eDiscovery for Residential Capital, LLC and the eDiscovery Manager for Ally Financial, Inc. I have held various positions for affiliates of Residential Capital since 2006.

4. I have reviewed the Settlement Agreement and understand that Section 1.4 defines the settlement class in this action as: “all persons who obtained 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 which was reinsured by Cap Re.”<sup>1</sup> I further understand the class only includes borrowers who obtained loans which required them to pay an amount representing the costs of the private mortgage insurance (“MI”) premiums.

5. I understand that Sections 1.7 and 2.7 of the Settlement Agreement task Cap Re and GMAC Mortgage with providing Lead Class Counsel and the Settlement Administrator with the Class Member List, which is defined as a list of “all known Class Members reasonably obtained from the readily-searchable computer media of Cap Re and GMAC Mortgage without the need for a file-level review.” This declaration describes the efforts taken by Cap Re and GMAC Mortgage to prepare the Class Member List.

#### **I. EFFORTS TO COMPILE SETTLEMENT CLASS MEMBER LIST**

6. Over the course of the past seven months, I participated on more than twenty-seven calls regarding the settlement Class Member List. There were between three and eight participants on each of these calls, which typically included counsel for Cap Re and GMAC Mortgage (“Defense Counsel”), current and former employees of GMAC Mortgage from the relevant departments (*e.g.*, business, eDiscovery, and data systems) and employees of Ocwen Loan Servicing, LLC (“Ocwen”).

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<sup>1</sup> This declaration incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms shall have the same meaning as in the Settlement Agreement unless otherwise defined herein.

7. In addition to these calls, we exchanged over two hundred e-mails, internally and with former employees, Ocwen, and Defense Counsel including over two hundred e-mails regarding the Class Member List.

**A. The Moore Database**

8. We began by investigating which sources might have information on whether Cap Re reinsured the MI on a loan.

9. Because Cap Re has never had any employees and did not maintain its own database of individual loan servicing data for the class members' loans, we investigated whether one or more of the available repositories that contained data concerning loans originated or acquired by GMAC Mortgage, Ally Bank, and their affiliates (collectively, "GMAC Repositories") could identify whether a loan had MI reinsured by Cap Re. Specifically, we reviewed each repository for fields that related to MI, searching for fields that would indicate whether a loan was reinsured by Cap Re. We could not locate such a field. We also consulted with Ocwen, which had purchased the mortgage servicing and origination platform assets, including servicing data, in 2013, about whether its servicing systems could identify whether a loan had MI reinsured by Cap Re. We confirmed from these sources that neither GMAC Mortgage nor Ocwen tracked whether Cap Re reinsured the MI on a loan. We also consulted with Milliman, Inc. ("Milliman"), a third party who provides actuarial services for Cap Re. In that capacity, Milliman receives from each of the MI providers quarterly data tapes that include loan-level data for loans reinsured by Cap Re. Based on inquiries to Milliman, however, we determined that Milliman began receiving the quarterly data tapes for loans reinsured by Cap Re from the MI providers in the first quarter of 2009 and Milliman had no data tapes for the January 1, 2004, to December 31, 2008, period. Accordingly, the data in Milliman's possession could not assist us in creating the Class Member List.

10. Next, we reviewed the quarterly summaries called “cession statements” which Cap Re received from the MI providers with whom it had reinsurance arrangements. The cession statements primarily provided consolidated data for the loans that the MI providers had identified as placed with Cap Re during that quarter.

11. Under each of Cap Re’s reinsurance agreements, MI policies were grouped into reinsurance pools, called “book years,” consisting of MI policies issued by the MI provider on loans in a “particular” calendar year. The book years also reflect when a loan was originated or acquired by a GMAC entity. The cession statements also indicated the book year to which each loan belonged.

12. From the book year data in the cession statements, we could identify all the potential loans that would have had MI reinsured by Cap Re for the class period.

13. The cession statements were typically provided as Excel spreadsheets or Adobe PDFs with each MI provider using its own format. Because many of the cession statements were not in a searchable format, they would need to be converted into a format that could be used to create a list of the potential loans for the 2004 through 2008 book years. Before undertaking such an onerous task, we needed to determine whether we had previously compiled the information from those statements.

14. As a part of our preparation of the Class Member List, we spoke several times with Mr. Elliot Grumer. Mr. Grumer served as the person primarily responsible for the oversight of Cap Re until approximately January 2013. Mr. Grumer informed us that, in 2011, Cap Re had endeavored to identify loans that might be subject to this action. Because Cap Re did not maintain a database of individual loan servicing data for the loans in its trusts, Mr. Grumer worked with various GMAC Mortgage employees from the relevant departments (*e.g.*, business, and data systems) to determine which loans from the cession statements might be relevant to the

class as defined in plaintiffs' Motion for Class Certification (ECF No. 173). Then, Mr. Grumer compiled certain loan information from the relevant cession statements to create a database of all loans that the MI providers had identified as placed with Cap Re for the 2004 through 2008 book years (the "Moore Database").

**B. Validation of the Moore Database**

15. Through a rigorous validation process, we determined that the Moore Database had the most complete information regarding which loans the MI providers identified as placed into the trusts for reinsurance by Cap Re for the relevant period. Accordingly, we concluded that the Moore Database was the best source to begin preparing the Class Member List.

16. To validate the Moore Database, Structured Query Language (SQL) statements were run against various tables of mortgage-related information in the available GMAC data repositories and the Ocwen loan servicing system to compare with the data in the Moore Database.

17. First, we had to determine which unique identifier for the loans in the Moore Database would be the best tool for searching the repositories. The MI providers had used an MI Certificate Number—which was assigned by the MI providers—as the primary identifier for loans on the cession statements. These MI Certificate Numbers were included in the Moore Database. In addition to the MI Certificate Number, the Moore Database contained several columns of "loan numbers" that corresponded to identifiers in the GMAC Repositories. For example, a loan that was acquired by Ally Bank could have various loan numbers: one assigned by the seller, one assigned by Ally Bank upon its acquisition, and one assigned by GMAC Mortgage for loan servicing purposes. Lastly, the Moore Database also contained a column for a "final loan number," which Mr. Grumer had derived from his work compiling the database and

which typically reflected the “loan number” used by GMAC Mortgage for loan servicing purposes.

18. As 95% of the loans in the potential class had a “final loan number,” we concluded that this identifier would be the best one to use for locating the loans in the repositories. In the event that we were unable to locate a loan using the “final loan number” in the repositories, we also searched for the loan using the alternative “loan numbers” and the MI Certificate Number, as needed.

19. An additional 4.5% of the loans in the potential class did not have a “final loan number” but had an entry in one of the other “loan number” columns. For those loans, we used the alternative “loan number” as the identifier for searching the repositories. In the event that we were unable to locate a loan using the alternative “loan number” in the repositories, we also searched for the loan using the MI Certificate Number.

20. The remaining 0.5% of the loans in the potential class had no “loan number” entries. For those loans, we used the MI Certificate Number to search for matches in the repositories.

21. After determining the appropriate identifier, we selected additional data points from the Moore Database to match against the data in the GMAC Repositories. Specifically, we selected the note date, state, zip code, loan amount, and borrower’s last name as additional matching points (“Matching Points”). We selected these data points because they were the only items in the Moore Database that would have remained constant over time and that were likely to have corresponding data in the GMAC Repositories. Thus, a match on one or more of the Matching Points would indicate that the loan that we had located in the GMAC Repositories was valid.

22. We developed SQL statements to search certain tables of mortgage-related information in the available repositories to cross-check the Moore Database. More specifically, we used the SQL statements to search the tables in the repositories using the “loan numbers” as the search key. When there was a match on a Matching Loan Number,<sup>2</sup> we pulled the Matching Points. We also pulled, when available, the address of the property securing the loan, the borrower’s first and last names, the co-borrower’s first and last names, and the mailing address, as this information was needed for the Class Member List pursuant to Sections 1.16 and 2.7 of the Settlement Agreement.

23. Because no one repository contained all of the loans in the class, the process required the creation of nineteen unique SQL statements to search all of the different repositories, including several archives. We also had Ocwen run redundant searches in its servicing system to confirm our results. The laborious validation process took more than three months to complete.

24. At the end of the validation process, we determined that we could not find any loan-number matches for 954 potential loans in the class. We found loan-number matches for 123,050 loans; however, we unable to validate 71 of those loans with an additional Matching Point. In sum, we were unable to validate 1,025 loans, or 0.83% of the potential class. Of the loans in the potential class, 122,979 loans (99.17%) were validated with the Matching Loan Number and at least one Matching Point.

**C. Application of the Settlement Class Criterion**

25. To determine which loans in the Moore Database meet the settlement class criterion that the borrower was required to pay an amount representing the costs of MI

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<sup>2</sup> Throughout the rest of this declaration, “Matching Loan Number” means the unique identifier that returned information from the repositories.



premiums, we undertook a series of steps resulting in the exclusion from the potential class of 1,474 loans where the borrower made no payment relating to the MI .

26. Specifically, we searched for fields in the Moore Database that would indicate the type of MI for each loan and found a field name “MI\_Type.” Any loan that was designated with the industry label of LPMI, or Lender-Paid MI, was excluded from the potential class because it indicated that the borrower did not make any MI premium payments, which instead were made by the lender. The loans that remained were designated in the MI\_Type field with the industry label of BPMI, or Borrower-Paid MI.

27. Next, we excluded loans that did not show that any MI premiums had been paid for the loan. The cession statements indicated whether the MI providers had collected payments representing the costs of MI premiums by showing a positive value in the field reflecting an amount for aggregate MI premiums—usually labelled “ETD\_PREM\_AMT” or “MI DIRECT WRITTEN PREMIUM TO DATE \$.” If the field had a value of zero, was blank, or had a negative number, then no MI premiums had been paid for that loan, and the loan was excluded from the potential class.

28. Lastly, we investigated whether it would be possible to determine whether the lender or the borrower actually paid the MI premiums (*e.g.*, for loans in arrears) for loans showing a positive aggregate MI payment amount. We found that this information was not obtainable from the available computer media of Cap Re and GMAC Mortgage. Accordingly, all loans in the Moore Database which had a BPMI designation and for which the field for aggregate MI payment indicated that any amount was paid were included in the potential settlement class.

29. Based upon our above investigation, with the class member criterion we excluded a total of 1,474 loans, which indicated a borrower had never paid for MI, from the Moore Database prior to its validation.

**D. Finalizing the Class Member List**

30. Lastly, we prepared the loan information for delivery to Lead Class Counsel and the Settlement Administrator as the Class Member List.

31. For the 122,979 validated loans, we needed to confirm that we had (a) the names of borrowers associated with the loan; (b) the address of the property securing the loan; and (c) the loan number as required by Section 2.7 of the Settlement Agreement. We provided both the Matching Loan Number and the MI Certificate Number on the Class Member List. We also provided the names of the borrower and co-borrowers on the Class Member List.

32. For 241 (0.19%) of the validated loans, the data in the repositories listed as the property address a “Box” address, *i.e.*, Post Office Box, Rural Route Box, or Highway Contract Route Box, the only address in the repositories. As such, we were unable to confirm the accuracy of these addresses. Based upon inquiries to Ocwen, we determined that Ocwen was not able to confirm the accuracy of these addresses either. Further, we could not determine the accuracy of those addresses without a file-level review of the appraisal documents pertaining to those loans—and then only to the extent that such documents are still in our possession. We did, however, include these loans on the Class Member List and provided the addresses that we were able to obtain from the readily-searchable computer media of Cap Re and GMAC Mortgage.

33. Next, we confirmed that we included the Last Known Address, to the extent that we found one during the validation process, in accordance with Section 1.16 of the Settlement Agreement.

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

Executed this May 20, 2014, in Bloomington, Minnesota.

A handwritten signature in black ink, appearing to read 'Todd Underhill', is written over a horizontal line.

Todd Underhill

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