

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

KIRP, LLC;

Plaintiff,

v.

NATIONSTAR MORTGAGE LLC,

Defendant.

Index No. _____

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff KIRP, LLC ("KIRP"), by and through its undersigned attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, for its Complaint against Nationstar Mortgage LLC, hereby alleges as follows:

INTRODUCTION

1. KIRP is a significant investor in certificates issued by six residential mortgage-backed security trusts sponsored by Residential Accredit Loans, Inc. (the "RALI Trusts"). KIRP brings this action against Nationstar, the Master Servicer for the RALI Trusts, for its liquidating loans owned by the trusts through on-line auctions at fire sale prices without authorization and in blatant abdication of its servicing duties under the governing contracts.

2. As the Master Servicer, the RALI Trusts pay Nationstar to "service" the mortgage loans owned by the trusts in the best interests of the trusts and their certificateholders. This includes working to maximize the recoveries on each of the mortgage loans through enumerated actions detailed in Pooling and Servicing Agreements (the "Servicing Agreements"), which set forth the Master Servicer's duties. However, rather than fulfilling its responsibilities to maximize recoveries, Nationstar has recently embarked on a campaign to benefit its own

interests at the expense of the RALI Trusts and their certificateholders, through auctioning off the trusts' mortgage loans in bulk ("Bulk Note Sales") for amounts that are a fraction of the loans' unpaid balances or the value of the properties securing the loans. While these Bulk Note Sales injure KIRP and the RALI Trusts' other certificateholders by dissipating the assets of the RALI Trusts, they provide multiple benefits to Nationstar, including through allowing them to more quickly recoup certain advances they made on the mortgage loans as part of their servicing duties. KIRP seeks to enjoin Nationstar from engaging in any further Bulk Note Sales in breach of its duties and to recover damages for the Bulk Note Sales that have already occurred.

3. The six RALI Trusts at issue in this case were formed in 2005 and 2006. Pursuant to the Servicing Agreements for each of the RALI Trusts, a Master Servicer is responsible for servicing the mortgage loans included in trust portfolios for the benefit of certificateholders. The servicing duties include making collections on the mortgage loans and, when a mortgage loan goes into default, maximizing the recoveries through the use of specified options, such as modifying the loan, attempting to secure payment from the mortgagor, or ultimately foreclosing on the loan if no better option exists. As part of its duties, the Master Servicer is required to advance certain costs related to defaulted or delinquent loans, such as costs for maintaining or protecting the property securing the loans as well as certain principal and interest payments from non-paying borrowers. The Master Servicer is allowed to recoup these costs at later times.

4. In July 2012, Nationstar purchased the servicing rights on the RALI Trusts from the prior Master Servicer, Aurora Loan Services. As part of that transaction, Nationstar assumed all of the duties of the Master Servicer under the Servicing Agreements, including the duty to service the mortgage loans owned by the RALI Trusts so as to maximize recoveries for the

benefit of the trusts' certificateholders. Nationstar also purchased the right to collect all of the Servicer Advances that Aurora had been entitled to recoup, and also assumed liabilities for outstanding advances. Indeed, Nationstar acquired the right to ultimately recoup over \$1 billion in advances as part of the acquisition.

5. However, Nationstar has not fulfilled its duties as Master Servicer, but rather has engaged in practices to enrich itself at the expense of the RALI Trusts' certificateholders. Specifically, as recently discovered by KIRP, beginning in mid-February 2013, Nationstar began selling the Trusts loans in internet auctions. Specifically, Nationstar executed Bulk Note Sales through auctioning off hundreds of defaulted mortgage loans, many owned by the RALI Trusts, at fire sale prices through an internet auction website, www.auction.com. These Bulk Notes Sales were impermissible for numerous reasons.

6. *First*, the Bulk Note Sales were not actions that Nationstar was authorized to take pursuant to the Servicing Agreements. Rather, the Servicing Agreements set forth enumerated steps that Nationstar is permitted to take to collect on defaulted loans, such as arranging for a payment plan, modifying a loan, permitting a short sale of the underlying property or, where necessary, foreclosing. The Servicing Agreements do not enumerate sales of mortgage notes, let alone Bulk Note Sales at deep discounts. To do so was in breach of contract.

7. Indeed, because Nationstar is not in any way authorized to sell loans, its actions amount to conversion. It was authorized to service the loans, or foreclose on the properties if all else failed. It was not entitled to sell the loans, let alone in bulk internet auctions.

8. *Second*, the Bulk Notes Sales breached Nationstar's express duties pursuant to the Servicing Agreements to act in the best interests of the certificateholders. Many of the mortgage loans that Nationstar auctioned off through the Bulk Note Sales only realized a fraction of the

unpaid principal balance of the loans and far less than the present value of the property securing the mortgage loans. The recoveries were thus well below the amounts that could have been recovered had Nationstar used the permitted means of effecting recoveries, such as loan modifications or individual foreclosures, and thus were not in the certificateholders' best interests.

9. To the contrary, the only party that appears to have benefited from the Bulk Note Sales is Nationstar itself. By utilizing Bulk Note Sales to liquidate large numbers of mortgage loans, Nationstar accelerated its recoupment of the Servicer Advances that it had purchased from Aurora at a discount. Since Nationstar stands to collect the Servicer Advances ahead of recoveries going to the RALI Trusts, Nationstar will be able to recoup the Servicer Advances even if the recovery was for less than would have been recovered through permissible means. Moreover, by liquidating large number of defaulted loans, Nationstar was also able to improperly decrease the pool of defaulted mortgage loans it was responsible for servicing, thus decreasing the services it needed to provide to the RALI Trusts. And, by utilizing www.auction.com—a website with which Nationstar has a business affiliation—Nationstar was able to route business to a business partner which, in turn, benefited Nationstar.

10. On February 5, 2013, KIRP wrote a letter to Nationstar expressing its extreme concern about the Bulk Note Sales of mortgage loans owned by the RALI Trusts and demanding that Nationstar cease from further Bulk Note Sales. Nationstar has not responded to the RALI Trusts' letter.

11. Also on February 5, 2013, KIRP (as holder of more than 25% of a class of certificates in each of the RALI Trusts) directed the trustee for the RALI Trusts, Deutsche Bank Trust Companies Americas (the "Trustee"), to institute immediate legal action to prevent further

Bulk Note Sales. On February 6, 2013, the Trustee's response recognized the "serious allegations" raised by KIRP's letter but indicated that it was unable to consider them quickly enough to pursue immediate legal action. It stated, however, that it had "no objection" to KIRP pursuing such action on its own "to protect all Certificateholders."

12. KIRP therefore brings this complaint for breach of contract, conversion, and temporary, preliminary and permanent injunctive relief against Nationstar as Master Servicer for the RALI Trusts due to its breaches of its servicing obligations as set out in the Servicing Agreements governing the RALI Trusts.

PARTIES

13. Plaintiff KIRP LLC is a Delaware limited liability corporation with its principal place of business in New York, New York.

14. Defendant Nationstar Mortgage LLC is incorporated in the State of Delaware and has its principal place of business at 350 Highland Drive, Lewisville, TX. It currently services over 645,000 mortgages totaling over \$100 billion in unpaid principal balance. Nationstar Mortgage LLC is a licensed Mortgage Banker in New York State, NYS Banking Department, with an office at One State Street, New York, NY 10004.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this action pursuant CPLR §302(a)(2). Venue lies in this Court pursuant to CPLR § 501 and § 503.

16. This Court has personal jurisdiction over Defendant Nationstar Mortgage LLC. because it entered into a contract to provide services in the state, engages in persistent course of conduct in the state, and expects, or should reasonably expect its acts to have consequences in the state and derives substantial revenue from interstate commerce. Moreover, Defendant Nationstar submitted to the jurisdiction of any New York State court sitting in New York County

in its contract with the predecessor servicer in which it assumed the role of Master Servicer for the RALI Trusts.

FACTS AND GENERAL ALLEGATIONS

BACKGROUND

17. This case concerns six securitization trusts, each of which are backed by pools of residential mortgage loans. The six securitizations are: RALI 2005-QO2; RALI 2005-QO4; RALI 2005-QO5; RALI 2006-QO5; RALI 2006-QO1; and RALI 2006-QO7. A set of Standard Terms of Pooling and Servicing Agreement, dated as of August 1, 2004 (“Standard Terms”), along with a Series Supplement, governs each of the RALI Trusts (each of the Series Supplements, along with the Standard Terms, collectively, a “Servicing Agreement”).

18. Mortgage pass-through securities, or Certificates, represent interests in the cash flows of the loans underlying the RALI Trusts. These Certificates are commonly and generically referred to as “RMBS,” or residential-mortgage backed securities. Investors in the Certificates, like Plaintiffs, are entitled to monthly distributions of the cash flows from the mortgage loans—primarily borrower payments of principal and interest—which are “passed through” the Trust to the Certificateholders.

19. Residential Accredit Loans, Inc. (“RALI”) is the seller of the Certificates of the RALI Trusts. Deutsche Bank Trust Company Americas is the Trustee. Defendant is the Master Servicer.

DUTIES OF THE MASTER SERVICER

20. Article III of the Servicing Agreements broadly sets forth Defendant’s contractual obligations as Master Servicer. The Master Servicer’s duties include, but are not limited to, maintaining loan files and mortgage loan documents; accepting and recording mortgage payments from borrowers, paying taxes and insurance from borrower escrow accounts,

negotiating workouts and modifications of mortgages upon default, and conducting or supervising the foreclosure process when needed. The standards the Master Servicer are required to follow in conducting these activities are set out in the Servicing Agreement.

21. For example, section 3.07 of the Servicing Agreements sets forth the Master Servicer's duties in connection with its collection activities. It provides:

The Master Servicer shall make reasonable efforts to collect all payments called for under the terms and provisions of the Mortgage Loans, and shall, to the extent such procedures shall be consistent with this Agreement and the terms and provisions of any related Primary Insurance Policy, follow such collection procedures as it would employ in its good faith business judgment and which are normal and usual in its general mortgage servicing activities.

(emphasis added).

22. Furthermore, to avoid unnecessary foreclosures when borrowers fall behind on their payments, the Servicing Agreements authorize the Master Servicer to engage in efforts commonly referred to as "loss mitigation." Subject to specific limitations in the Servicing Agreements, the Master Servicer is authorized, under certain conditions, to waive certain late payments and prepayment charges; extend due dates for payment on a mortgage loan, waive, modify or vary any term of any mortgage loans; and/or "consent to the postponement of strict compliance with any such term or in any manner grant indulgence to any Mortgagor if in the Master Servicer's determination such waiver, modification, postponement or indulgence is not materially adverse to the interests of the Certificateholders." See Section 3.07 of the Servicing Agreements.

23. The Servicing Agreements also require the Master Servicer to extend advances from time to time. Advances are loans that the Master Servicer extends to the RALI Trusts to cover, among other things, payments missed by borrowers and other customary, reasonable and

necessary "out of pocket" costs and expenses incurred in connection with a default, delinquency or unanticipated event (collectively "Advances"). Generally speaking, the Master Servicer must make such advances unless the Master Servicer deems a proposed advance to be non-recoverable. The Master Servicer is entitled to eventually recover these advances from the eventual proceeds of an REO liquidation and/or short sale. See Standard Terms 3.10.

24. The Servicing Agreements also govern the steps the Master Servicer may take in regard to defaulting loans. Section 3.14 provides:

(a) The Master Servicer shall foreclose upon or otherwise comparably convert (which may include an REO Acquisition) the ownership of properties securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments pursuant to Section 3.07. Alternatively, the Master Servicer may take other actions in respect of a defaulted Mortgage Loan, which may include (i) accepting a short sale (a payoff of the Mortgage Loan for an amount less than the total amount contractually owed in order to facilitate a sale of the Mortgaged Property by the Mortgagor) or permitting a short refinancing (a payoff of the Mortgage Loan for an amount less than the total amount contractually owed in order to facilitate refinancing transactions by the Mortgagor not involving a sale of the Mortgaged Property), (ii) arranging for a repayment plan or (iii) agreeing to a modification in accordance with Section 3.07. In connection with such foreclosure or other conversion, the Master Servicer shall, consistent with Section 3.11, follow such practices and procedures as it shall deem necessary or advisable, as shall be normal and usual in its general mortgage servicing activities and as shall be required or permitted by the Program Guide.

25. There is no provision in the Servicing Agreements for the sale of loans, let alone sales of loans in bulk.

26. The Master Servicer's failure to comply with any of these obligations constitutes an event of default. Specifically, under section 7.01(ii) of the Servicing Agreements, an Event of Default arises when:

(ii) the Master Servicer shall fail to observe or perform in any material respect any other of the covenants or agreements on the part of the Master Servicer contained in the Certificates of any Class or in this Agreement and such failure shall continue unremedied for a period of 30

days (except that such number of days shall be 15 in the case of a failure to pay the premium for any Required Insurance Policy) after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Master Servicer by the Trustee or the Company, or to the Master Servicer, the Company and the Trustee by the Holders of Certificates of any Class evidencing, in the case of any such Class, Percentage Interests aggregating not less than 25%.

NATIONSTAR BUYS THE SERVICING RIGHTS AND RESPONSIBILITIES OF THE PLAINTIFF TRUSTS

27. At the RALI Trusts' inception, the Master Servicer was Residential Funding Corporation. In 2008, Aurora Loan Services LLC ("Aurora") assumed the servicing responsibilities. Over the next several years, many of the loans in the Trusts and affiliated RALI trusts became non-performing. Their non-performance caused Aurora to advance very substantial sums in its duties as Master Servicer, reaching well north of \$1 billion over all trusts serviced by Aurora.

28. Last year, Aurora sold all of its servicing rights to Defendant Nationstar. Specifically, on March 6, 2012, Aurora and Nationstar entered into an asset purchase agreement ("Asset Purchase Agreement"), in which Aurora agreed to sell its servicing assets in the Plaintiff Trusts. The purchase closed on June 28, 2012.

29. Through that agreement, Nationstar acquired approximately \$63.7 billion in residential mortgage servicing rights, as measured by unpaid principal balance. The cash purchase price of the mortgage servicing rights was approximately \$268 million, related largely to servicing advance receivables. Many of the loans that Nationstar purchased the servicing rights to were non-performing. In order to complete the servicing acquisition, Nationstar also financed \$1.45 billion to fund the balance of the related servicing advance receivables. In other words, as a result of the acquisition of Aurora's servicing rights, Nationstar had to borrow \$1.45 billion just to fund the outstanding advances Aurora had made.

30. As part of the Asset Purchase Agreement, Nationstar agreed to assume Aurora's rights and responsibilities related to the Servicing Agreements for the Plaintiff Trusts. *See* Asset Purchase Agreement, § 2.02. The Asset Purchase Agreement also contained the following provision regarding the standard of care that Nationstar was contractually obligated to use in servicing the acquired loans, including those in the Plaintiff Trusts:

[W]ith respect to the servicing of the Serviced Mortgage Loans . . . and the collection of Servicer Advances, Purchaser shall (i) exercise the degree of care which is standard in the industry with respect to the servicing of similar loans (including the conduct of Foreclosures and the management of property) and the collection of similar advances and claims and (ii) service such Serviced Mortgage Loans in accordance with applicable Law and in accordance with applicable Investor and Insurer requirements governing servicers and the provisions of the applicable Servicing Agreements and Subservicing Agreements.

Asset Purchase Agreement, § 7.10(w).

NATIONSTAR USES INTERNET SITE TO AUCTION OFF POOLS OF NON-PERFORMING LOANS WITHOUT AUTHORIZATION OR NOTICE TO THE RALI TRUSTS

31. Nationstar thus assumed all of Aurora's multi-billion dollar portfolio of loan servicing rights and responsibilities, and agreed pursuant to the Trusts' contracts to service those loans for the benefit of certificateholders. But that is not what it did.

32. In mid-February 2013, just months after purchasing Aurora's servicing rights, Plaintiff discovered that rather than servicing the loans, Nationstar was using an internet website to auction non-performing loans in the RALI Trusts and others. In particular, Nationstar held two day auctions of dozens of pools of loans on an internet website: www.auction.com. Nationstar's auction was called "\$250 Million+ in Residential Non-Performing Note Auction – Secured by Residential Assets in CA, CO, FL,GA, IL, MD, MA, NJ, NM, NY, OR, PA, TN, UT, VA & WA. All offered in Pools.(N-098)." The first auction began on February 19, 2013 and ended two days later. The second auction began on March 4, 2013 and ended two days later on

March 6, 2013. Another is scheduled to commence March 11, 2013. Although the auction bidding has closed for the first two, the sale and transfer is not complete for any of the auctions.

33. As the description indicated, Nationstar was selling pools of loans, including those owned by the RALI Trusts. For example Nationstar auctioned eight mortgage notes for properties in Staten Island, New York for \$1,745,000, despite the fact that broker opinion price on the underlying properties was \$3,490,000. In other words, Nationstar fire sold these mortgage notes for only 50% of the broker value of the underlying properties. There are numerous other egregious examples: ten mortgage notes for properties in Essex, New Jersey auctioned for \$470,000 when the broker opinion price on the underlying properties was \$1,450,000 (auctioned for 32% of the broker price opinion); twenty mortgage notes for properties in Seattle, Washington auctioned for \$3,425,000 when the broker opinion price on the underlying properties was \$5,250,900 (auctioned for 65% of the broker price opinion); and five mortgage notes for properties in Chicago, Illinois auctioned for \$440,000 when the broker opinion price on the underlying properties was \$763,300 (auctioned for 58% of the broker price opinion).

34. On information and belief, the prices realized from bulk sales on an internet website posting dozens of pooled properties open for two days are significantly lower than the recoveries that could have been realized from continued servicing, modification or foreclosure.

35. No notice of this auction was given to the RALI Trusts' Trustee or their certificateholders. Nor is there any provision in the contract that would allow a Master Servicer to sell any of the loans, not to mention selling them in bulk in an internet fire sale. The Master Servicer is supposed to service the loans, modify the loans, or foreclose on the property and distribute the proceeds. It is not entitled to sell the loans.

36. Upon information and belief, Nationstar has attempted to use the proceeds of this internet sale to accelerate its recoupment of the advances that Aurora had made and Nationstar had financed as part of the Asset Purchase.

NATIONSTAR AND AUCTION.COM CROSS PROMOTE

37. Notably, auction.com advertises for Nationstar on its website. Under "Financing Information" it includes a description and endorsement of Nationstar Mortgage and describes how "Nationstar Mortgage offers multiple solutions and strives to provide ultimate customer satisfaction" <http://www.auction.com/nationstar.php>

38. And, vice versa, Nationstar's website advertises for auction.com. On Nationstar's pages regarding REO Finance, it exclaims how "Nationstar Mortgage and Auction.com Have Teamed Up to Provide REO Expertise."

TRUSTEE'S REFUSAL TO TAKE ACTION

39. Shortly after learning of Nationstar's practices, Plaintiff contacted the Trustee for the Plaintiff Trusts, Deutsche Bank Trust Company Americas ("the Trustee") to inform it of Nationstar's conduct and request enforcement against Nationstar. On March 5, 2013, Plaintiff, as holders of at least 25% of the certificate in a class in each of the RALI Trusts, made a written request upon the Trustee to institute such an action in its own name as Trustee and offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein. In particular, Plaintiff notified the Trustee of Nationstar's default and breaches of its duties under the Servicing Agreements by executing bulk sales of non-performing mortgage notes through www.auction.com.

40. On March 6, 2013, the Trustee responded to the letter, indicating that it would not be able to pursue emergency action without additional time, but endorsing KIRP's right to do so. The letter stated "Given this limited time and information provided to the Trustee to consider

these complex issues, the Trustee cannot meaningfully consider and respond to them in the allotted time.” The Trustee concluded: “We are mindful of your representations that time is of the essence, and the Trustee seeks to avoid the possibility of harm to Certificateholders. Accordingly, the Trustee understands that your client intends to proceed with legal action in its own name to protect all Certificateholders, and the Trustee has no objection to your client pursuing that course of action.”

FIRST CLAIM FOR RELIEF
(BREACH OF THE SERVICING AGREEMENTS)

41. Plaintiff repeats all of the foregoing allegations as though fully set forth herein.

42. This is a claim against Defendant for breach of contract with respect to each of the Servicing Agreements. The Servicing Agreements are valid contracts between, among others, Defendant, the Master Servicer, and the RALI Trusts, and Plaintiff is a third party beneficiary to the Servicing Agreements.

43. In the Servicing Agreements, and for valuable consideration, Defendant agreed to serve as the Master Servicer for the RALI Trusts and undertook duties as the Master Servicer subject to the terms and conditions set forth in the Servicing Agreements. Specifically, in the event of a defaulting mortgage loan, Section 3.14 enumerates what actions the Master Servicer is entitled to take:

(a) The Master Servicer shall foreclose upon or otherwise comparably convert (which may include an REO Acquisition) the ownership of properties securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments pursuant to Section 3.07. Alternatively, the Master Servicer may take other actions in respect of a defaulted Mortgage Loan, which may include (i) accepting a short sale (a payoff of the Mortgage Loan for an amount less than the total amount contractually owed in order to facilitate a sale of the Mortgaged Property by the Mortgagor) or permitting a short refinancing (a payoff of the Mortgage Loan for an amount less than the total amount contractually owed in order to facilitate refinancing transactions by the Mortgagor not involving a sale of the

Mortgaged Property), (ii) arranging for a repayment plan or (iii) agreeing to a modification in accordance with Section 3.07. In connection with such foreclosure or other conversion, the Master Servicer shall, consistent with Section 3.11, follow such practices and procedures as it shall deem necessary or advisable, as shall be normal and usual in its general mortgage servicing activities and as shall be required or permitted by the Program Guide; provided that the Master Servicer shall not be liable in any respect hereunder if the Master Servicer is acting in connection with any such foreclosure or other conversion in a manner that is consistent with the provisions of this Agreement.

44. Defendant has breached those obligations in numerous ways, including but not limited to:

- bulk-selling and pursuing bulk sales of mortgage notes without authorization and in breach of the Servicing Agreements;
- employing sales practices—including the use of an internet auction site that does not customarily handle the sale of non-performing loan pools—that are not designed to maximize returns on the mortgage loans for the RALI Trusts’ investors;
- breaching Servicing Agreement section 3.07 through its improper sales practices and failing to exercise “good faith business judgment” and “make reasonable efforts to collect all payments called for under the terms and provisions of the Mortgage Loans;”
- breaching section 3.14 of the Servicing Agreements by pursuing actions not allowed by the Servicing Agreements and addressing defaulted mortgage loans in ways that are not “necessary or advisable” or “normal or usual.”

45. The RALI Trusts have performed all of the conditions, covenants, and promises required in accordance with the Servicing Agreements in order to enforce the Defendant’s obligations under the Servicing Agreements.

46. Defendant should be required to abide by its contractual obligations under the Servicing Agreements. As a result of Defendant’s past and continuing improper bulk sales of mortgage assets, the RALI Trusts and their Certificateholders have been irreparably harmed. The RALI Trusts and their Certificateholders should be awarded an injunction against sale and

transfer of the auctioned loans and against further sales of loans as well as damages in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF
(CONVERSION)**

47. Plaintiff repeats all of the foregoing allegations as though fully set forth herein.

48. As Master Servicer, Defendant took possession of the mortgage loans collateralizing the RALI Trusts. Under the Servicing Agreements, Defendant was given the authority to service those loans including if necessary modification or foreclosure. Authorized actions in the event of borrower default were specifically enumerated in section 3.14.

49. Nowhere in any contract was Defendant given the authority to sell the loans.

50. Without permission or authority, Defendant sold loans in the RALI Trusts through improper bulk sales auctions of the mortgage loans and interfered with the RALI Trusts' enjoyment and right of possession over that property.

51. Compounding the harm caused by Defendant's *ultra vires* disposal of the mortgage loans, Defendant is improperly exercising dominion and control over the proceeds of the unauthorized bulk sales. Without authority and in breach of the Servicing Agreements, upon information and belief, Defendant has converted portions of the proceeds of the bulk sales to improperly reimburse itself for servicing advances, recoup other expenses and fees related to the unauthorized bulk sales, and other servicing fees and costs.

52. Defendant's improper disposal of the mortgage loans and improper diversion of the proceeds of the sales has deprived and continues to deprive the RALI Trusts of its lawful rights to the mortgage loans.

53. Defendant's improper conduct has been and continues to be without the consent of the RALI Trusts.

54. Plaintiff is entitled to an injunction preventing further conversion and damages in an amount to be determined at trial as a direct and proximate cause of Defendant's conversion of the RALI Trusts' property.

**THIRD CLAIM FOR RELIEF
(UNJUST ENRICHMENT)**

55. Plaintiff repeats all of the foregoing allegations as though fully set forth herein.

56. Defendant, through its breaches of the Servicing Agreements, and unauthorized bulk sale of the mortgage notes, has enriched itself at the expense of the RALI Trusts and their Certificateholders. Defendant has been unjustly enriched in numerous ways, including but not limited to its unjust recoupment of servicing advances.

57. It is therefore against equity and good conscience to permit Defendant to retain such recoveries and other unjust benefits received for its breaches of the Servicing Agreements. Defendant must disgorge all such recoveries received on breaching the Servicing Agreements.

**FOURTH CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)**

58. Plaintiff repeats all the foregoing allegations as though fully set forth herein.

59. Defendant has breached the Servicing Agreements in numerous ways.

60. Despite repeated requests, Defendant has refused to cease and desist from its conduct and provide assurances of the same. The RALI Trusts reasonably expect that Defendant will continue its improper bulk sale practices absent an order from the Court.

61. Consequently, there exists a real and justiciable controversy as to the rights and legal relations of the parties under the Servicing Agreements.

62. Pursuant to New York C.P.L.R. § 3001, Plaintiff requests a declaration that Defendant's practice of bulk loan sales on the auction.com website violates section 3.07, 3.14

and other terms and conditions of the Servicing Agreements, and an order giving effect to such declaration.

FIFTH CLAIM FOR RELIEF
(TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION)

63. Plaintiff seeks a temporary restraining order and preliminary injunction enjoining Defendant from violating the Servicing Agreements. In particular, Plaintiff seeks a temporary restraining order and preliminary injunction against final sale and transfer of the auctioned loans as well as against any further auctions or other sales of the loans in the Trusts.

64. Plaintiff has a clear right to this relief based on the allegations set forth above.

65. If the Court were to deny Plaintiff's request for injunction, there is a substantial threat that Plaintiff will suffer immediate and irreparable injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- a. A declaration that Defendant's bulk sales of mortgage loans on the auction.com website violate the Servicing Agreements in the respects articulated above;
- b. An award to Plaintiff of a temporary restraining order and preliminary injunctive relief enjoining Defendant from final sale and transfer of the already auctioned loans, as well as enjoining any further selling loans, in bulk on the auction.com website or otherwise, and against further violations of the Master Servicer's duties under the Servicing Agreements;
- c. Disgorgement of all unjust profits and recoveries Defendant received as a result of its breaches of the Servicing Agreements;
- d. An award of all compensatory, consequential, and/or equitable damages from Defendant, further compensating for the Trusts' losses relating to all mortgage loans sold

through the Master Servicer's improper bulk sales practices and other breaches of its obligations under the Servicing Agreements;

- e. Reimbursement of costs and expenses of maintaining this action for the benefit of the RALI Trusts, including reasonable attorney's and expert fees;
- f. Prejudgment interest, as approved by the Court; and
- g. An award of such other and further relief as this Court may deem just and proper.

Dated: New York, New York
March 7, 2013

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