

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE UNION CENTRAL LIFE INSURANCE)	
COMPANY, AMERITAS LIFE INSURANCE)	
CORP., and ACACIA LIFE INSURANCE)	
COMPANY,)	
)	
)	No. 11-cv-2890 (GBD)
Plaintiffs,)	
)	ECF Case
-against-)	
)	
ALLY FINANCIAL, INC., <i>et al.</i> ,)	
)	
Defendants.)	

**MEMORANDUM OF LAW IN SUPPORT OF THE SETTling PARTIES' JOINT
MOTION FOR ENTRY OF ORDER OF VOLUNTARY DISMISSAL WITH
PREJUDICE AND BAR ORDER**

Plaintiffs The Union Central Life Insurance Company, Ameritas Life Insurance Corp., and Acacia Life Insurance Company (collectively, "Plaintiffs"), and UBS AG, UBS Securities LLC, and Mortgage Asset Securitization Transactions, Inc. (collectively, "UBS") (together, the "Settling Parties"), have reached a settlement and entered into a Settlement Agreement in connection with the above-captioned action that resolves Plaintiffs' claims against UBS. The Settlement Agreement does not resolve or release claims as to non-settling defendants. Pursuant to Federal Rules of Civil Procedure 21 and 41(a)(2), the Settling Parties respectfully submit this memorandum of law in support of their joint motion for entry of an order of voluntary dismissal of UBS, with prejudice, and for entry of a bar order as to UBS.

BACKGROUND

Plaintiffs and UBS entered into a settlement agreement as of March 5, 2014. The Settlement Agreement provides that the Settling Parties shall file a motion seeking entry of an

order of voluntary dismissal with prejudice and a bar order. The proposed order states, in relevant part:

IT IS FURTHER ORDERED that (a) each of the other current or former non-settling defendants in the Action, including but not limited to Ally Financial Inc., Residential Funding Securities, LLC, Residential Capital LLC, Residential Funding Company, LLC, Residential Accredited Loans, Inc., Citigroup Inc., Citigroup Global Markets Inc., CitiMortgage, Inc., Citigroup Global Markets Realty Corp., Citicorp Mortgage Securities, Inc., Citigroup Mortgage Loan Trust Inc., Deutsche Bank Securities Inc., Goldman, Sachs & Co., GS Mortgage Securities Corp., Goldman Sachs Mortgage Company, HSBC Securities (USA) Inc., IndyMac RMBS, Inc., Morgan Stanley, Morgan Stanley & Co. Incorporated, Morgan Stanley Capital I Inc., RBS Securities Inc., SunTrust Capital Markets, Inc., WaMu Capital Corp., Washington Mutual Mortgage Securities Corp., Randall Costa, Douglas R. Krueger, Bruce J. Paradis and Daniel L. Sparks, and; (b) any other person or entity later named as a defendant in this Action; and (c) any other person or entity that becomes liable to Plaintiffs, or to any current non-settling defendant in this Action, by reason of judgment or settlement of any claim that was asserted or that could have been asserted against UBS in this Action relating to or arising out of a Covered Security¹ (collectively, the “Non-Settling Defendants”), are hereby permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against UBS, its present and former parents, subsidiaries, divisions and affiliates, the present and former partners, employees, officers and directors of each of them, the present and former attorneys, accountants, insurers (but not affecting any obligation owed to UBS by any insurer), and agents of each of them, and the predecessors, heirs, successors and assigns of each (collectively, the “Settling Defendants”), that seeks to recover from UBS any part of any judgment entered against the Non-Settling Defendants and/or any settlement reached with any of the Non-Settling Defendants, in connection with any claims relating to a Covered Security that are or could have been asserted against the Non-Settling Defendants in this Action or that arise out of or relate to any such claims that are or could have been asserted in this Action, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any federal or state court, or in any other court,

¹ A “Covered Security” means all certificates of RMBS issued, sponsored, or underwritten by UBS and sold to Union Central from January 1, 2004 to December 31, 2008, including but not limited to MASTR Asset Securitization Trust 2005-1, MASTR Asset Securitization Trust 2005-2, MASTR Asset Securitization Trust 2006-1, Citicorp Mortgage Securities Trust Series 2007-5, IndyMac IMJA Mortgage Loan Trust 2007-A1, RALI Series 2005-QA9 Trust, RALI Series 2005-QS7 Trust, and RALI Series 2005-QS9 Trust.

arbitration proceeding, administrative agency, or other forum in the United States or elsewhere;

IT IS FURTHER ORDERED that UBS is hereby permanently BARRED, ENJOINED AND RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against any of the Non-Settling Defendants that seeks to recover any part of the settlement payment to be made by UBS to Plaintiffs in connection with the settlement of this Action, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States;

IT IS FURTHER ORDERED that the Plaintiffs shall provide any Non-Settling Defendant against which it obtains a judgment on claims related to any or all of the following securitizations: MASTR Asset Securitization Trust 2005-1, MASTR Asset Securitization Trust 2005-2, MASTR Asset Securitization Trust 2006-1, Citicorp Mortgage Securities Trust Series 2007-5, IndyMac IMJA Mortgage Loan Trust 2007-A1, RALI Series 2005-QA9 Trust, RALI Series 2005-QS7 Trust, and RALI Series 2005-QS9 Trust, a judgment credit in an amount that is the greater of (a) the amount of Plaintiffs' settlement with UBS in this Action allocated to the relevant security, as reflected on the confidential schedule attached to the Settling Parties' settlement agreement as Confidential Exhibit B (the "Confidential Schedule"), or (b) for each such claim, state or federal, on which contribution or indemnity is available, the proportionate share of UBS's fault as proven at trial; . . .

ARGUMENT

I. The Proposed Bar Order Is Consistent With Second Circuit Law And Should Be Entered

To encourage settlement of complex litigation before trial, partial settlements as to less than all defendants often include bar orders. *Eichenholtz v. Brennan*, 52 F.3d 478, 486 (3d Cir. 1995); *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 494 (11th Cir. 1992) (citing, e.g., *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155 (4th Cir. 1991)); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 228 F.R.D. 541, 559 (S.D. Texas 2005); *see also Gerber v. MTC Elec. Tech. Co.*, 329 F.3d 297 (2d Cir. 2003) (affirming with slight modification district court's bar order extinguishing non-settling defendants' claims for indemnity and contribution). Indeed, "[w]ithout the ability to

limit the liability of settling defendants through bar orders ‘it is likely that no settlements could be reached.’” *In re WorldCom Inc., ERISA Litig.*, 339 F. Supp. 2d 561, 568 (S.D.N.Y. 2004) (quoting *In re Ivan F. Boesky Sec. Litig.*, 948 F.2d 1358, 1369 (2d Cir. 1991)). Courts will approve a (i) narrowly tailored bar order where (ii) the settlement has been entered in good faith and (iii) no one has been set apart for unfair treatment. *In re Masters Mates & Pilots Pension Plan and IRAP Litig.*, 957 F.2d 1020, 1031 (2d Cir. 1992). Here, the proposed bar order meets all of these criteria.

First, the bar order applies only to claims, such as contribution and indemnity claims, where the alleged injury to the Non-Settling Defendant is the Non-Settling Defendant’s liability to Plaintiffs arising out of a Covered Security and relating to a claim that is or could have been asserted against UBS in this Action. *See In re WorldCom, Inc. Sec. Litig.*, 2005 WL 591189, at *10 (S.D.N.Y. 2005) (noting that bar orders are permissible “provided that ‘the only claims that are extinguished are claims where the injury is the non-settling defendants’ liability to the plaintiffs” (quoting *Gerber*, 329 F.3d at 307)).

Second, the settlement was entered into in good faith between UBS and Plaintiffs following an arm’s length negotiation. *See Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) (holding bar orders should be approved where there is no evidence of fraud or collusion); *In re Enron Corp. Sec. Litig.*, 228 F.R.D. at 565 (approving bar order where the court found no evidence of “intentional fraud or collusion”).

Third, nothing in the requested bar order sets apart any entity or individuals, including the Non-Settling Defendants, for unfair treatment. The bar order (i) does not apply to anyone other than the Non-Settling Defendants; (ii) is reciprocal; and (iii) provides full and fair protection to Non-Settling Defendants because it provides them with a judgment credit equal to the greater of

the settlement amount attributable to the securities on which UBS was sued or the Non-Settling Defendants' proportionate share of fault. As explained by the Second Circuit in *Gerber v. MTC Electronic Tech. Co.*, such judgment credit language:

ensures that no matter how the settlement funds are distributed as between damages and other elements, *the non-settling defendants will never be required to pay more than their proportionate share of an award as determined by the trier of fact.*

329 F.3d 297, 301 (2d Cir. 2003) (emphasis added).²

II. The Confidentiality Provisions Of The Settlement Agreement Protect The Interests Of All Parties

The terms of the settlement, including the amount of the settlement, are confidential. As the Second Circuit has made clear, the amount of a settlement may be of particular concern to parties engaged in a compromise of pending litigation, and thus extending confidentiality to such amounts is to be encouraged by courts to facilitate and foster settlement. *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 143 (2d Cir. 2004) (explaining that there is no established presumption of access with respect to information contained in confidential settlement agreements not filed with the Court and that "honoring the parties' express wish for confidentiality may facilitate settlement, which courts are bound to encourage"). This case is no different, as the confidentiality of the terms of the settlement and the settlement amount is a key part of the settlement.

District courts are empowered to prevent access to confidential information relating to settlements "when necessary to encourage the amicable resolution of disputes." *City of Hartford v. Chase*, 942 F.2d 130, 135 (2d Cir. 1991); *see also United States v. Glens Falls Newspapers*,

² *See also In re Initial Public Offering Sec. Litig.*, 226 F.R.D. 186, 203-204 (S.D.N.Y. 2005); *In re Worldcom, Inc. Sec. Litig.*, No. 02 Civ. 3288, 2005 WL 613107, at *5 (S.D.N.Y. March 15, 2005); *Agway, Inc. Employees' 401(K) Thrift Investment Plan v. Magnuson*, 409 F. Supp. 2d 136, 143 (N.D.N.Y. 2005).

Inc., 160 F.3d 853, 856 (2d Cir. 1998) (affirming district court order sealing settlement documents and drafts in part because of the Court’s responsibility to facilitate prompt and fair settlement “so as to avoid the uncertainty, expense and delay inherent in a trial”). Maintaining the confidentiality of the settlement amount will not compromise the Non-Settling Defendants’ judgment credit rights, as the Proposed Bar Order permits the disclosure of the Confidential Schedule to a court of competent jurisdiction, which is sufficient to permit the execution of the judgment credit provision.

CONCLUSION

For the foregoing reasons, Plaintiffs and UBS respectfully request that the Court enter the attached [Proposed] Order Of Voluntary Dismissal With Prejudice And Bar Order.

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New York, New York

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