

EXECUTION COPY

Hon. Laura Gene Middaugh

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

ALAN GARDNER, on behalf of himself and others
similarly situated,

No. 10-2-36902-3 SEA

Plaintiff,

v.

GMAC MORTGAGE, LLC, a foreign corporation,

Defendant.

TIFFANY SMITH, on behalf of herself and others
similarly situated,

No. 11-2-10126-6 SEA

Plaintiff,

v.

HOMEcomings FINANCIAL, LLC, a foreign
corporation,

AMENDED CLASS ACTION
SETTLEMENT AGREEMENT

Defendant.

This Amended Class Action Settlement Agreement (the "Amended Agreement") is made and entered into between and among (a) plaintiffs Alan Gardner and Tiffany Smith ("Plaintiffs"), on behalf of themselves and a Settlement Class (as defined below), and (b) defendants GMAC Mortgage, LLC ("GMACM") and Homecomings Financial, LLC ("Homecomings" and, together with GMACM, the "Settling Defendants").

1 **RECITALS¹**

2 WHEREAS, on October 20, 2010, plaintiff Alan Gardner filed a putative class action against
3 GMACM captioned *Alan Gardner, et al. v. GMAC Mortgage, LLC*, Case No. 10-2-36902-3 SEA (the
4 “*Gardner Action*”), on behalf of borrowers in the State of Washington alleging that GMACM
5 improperly recouped from borrowers fees that GMACM incurred to record substitution of trustee or
6 appointment of substitute trustee documents with county recorders (“*Substitution Recording Fees*”)
7 when borrowers paid off loans serviced by GMACM; and

8 WHEREAS, on March 18, 2011, plaintiff Tiffany Smith filed a putative class action against
9 Homecomings captioned *Tiffany Smith, et al. v. Homecomings Financial, LLC*, Case No. 11-2-10126-6
10 SEA (the “*Smith Action*” and, together with the *Gardner Action*, the “*Actions*”), on behalf of borrowers
11 in the State of Washington alleging that Homecomings improperly recouped from borrowers
12 *Substitution Recording Fees* when borrowers paid off loans serviced by Homecomings; and

13 WHEREAS, on or about March 2, 2012, Plaintiffs and the Settling Defendants entered into an
14 agreement to settle the *Actions* under the terms of a written Class Action Settlement Agreement (the
15 “*Original Settlement*”), which was presented to and preliminarily approved by the Court on March 15,
16 2012; and

17 WHEREAS, on May 14, 2012, after notice of the *Original Settlement* had been mailed to the
18 Settlement Class, Residential Capital, LLC and certain of its direct and indirect subsidiaries, including
19 the Settling Defendants, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in
20 the United States Bankruptcy Court (“*Bankruptcy Court*”) for the Southern District of New York, Case
21 No. 12-12020 (MG) (the “*Bankruptcy Proceeding*”); and

22 WHEREAS, commencement of the *Bankruptcy Proceeding* subjected the *Actions* to a stay of
23 proceedings pursuant to 11 U.S.C. § 362(a); and
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27 ¹ All capitalized terms not specifically defined in the following Recitals are defined in Section I below.

1 WHEREAS, on October 23, 2012, Plaintiffs' Counsel filed two Proofs of Claim in the
2 Bankruptcy Proceeding, (i) an unsecured claim against GMACM in the amount of \$1,926,222.33 on
3 behalf of the putative class in the Gardner Action, which was designated as Claim No. 2881 on the
4 Debtors' claims register and (ii) an unsecured claim against Homecomings in the amount of \$740,591.98
5 on behalf of the putative class in the Smith Action, which was designated as Claim No. 2764 on the
6 Debtors' claims register (together, the "Claims"); and

7 WHEREAS, the Settling Defendants unequivocally deny Plaintiffs' allegations in the Actions,
8 deny the validity of the Claims, and maintain, among other things, that the disputed fees were permitted
9 by the contracts, were authorized and voluntarily paid by the borrowers, that the borrowers received a
10 substantial benefit in exchange for payment of the fees, that the manner of charging, disclosing and
11 requesting payment of the fees was not unfair or deceptive and did not have the capacity to deceive or
12 mislead borrowers, and has denied that certification of any class is appropriate and contends that they
13 would prevail in the Actions; and

14 WHEREAS, Plaintiffs contend that certification of a class would be appropriate, that their
15 claims are meritorious, and that they would prevail in the Actions and/or on the Claims if litigated in the
16 Bankruptcy Proceeding; and

17 WHEREAS, GMACM has identified approximately 41,369 instances where Substitution
18 Recording Fees were recouped and retained from borrowers on Loans secured by properties in the State
19 of Washington during the Settlement Class Period; and

20 WHEREAS, Homecomings has identified approximately 23,669 instances where Substitution
21 Recording Fees were recouped and retained from borrowers on Loans secured by properties in the State
22 of Washington during the Settlement Class Period; and

23 WHEREAS, based upon extensive analysis of the facts and the law applicable to Plaintiffs'
24 claims in the Actions, and the Claims in the Bankruptcy Proceeding, and taking into account the
25 extensive burdens and expense of litigation, including the risks and uncertainties associated with
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1 protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the
2 claims of the Settlement Class in light of the Bankruptcy Proceeding, Plaintiffs and Plaintiffs' Counsel
3 have concluded that this Amended Agreement provides substantial benefits to the Settlement Class and
4 is fair, reasonable, adequate and in the best interests of the Settlement Class; and

5 WHEREAS, although Settling Defendants deny the assertions by Plaintiffs in the Actions, deny
6 the validity of the Claims, and deny any wrongdoing or liability to Plaintiffs or any putative class of any
7 kind, Settling Defendants have concluded that this Amended Agreement is in the best interests of the
8 Plaintiffs, Settling Defendants, and Released Parties; and

9 WHEREAS, Plaintiffs and the Settling Defendants intend by this Amended Agreement to
10 resolve, terminate and finally conclude any and all Settled Class Claims, including the Claims in the
11 Bankruptcy Proceeding, and that the Settling Defendants and the Released Parties shall receive complete
12 releases and final peace from all such Settled Class Claims on behalf of Plaintiffs and the Settlement
13 Class; and

14 WHEREAS, Plaintiffs and the Settling Defendants intend by this Amended Agreement to
15 resolve, terminate and finally conclude any and all Settled Class Claims, including the Claims in the
16 Bankruptcy Proceeding, and that Plaintiffs and the Settlement Class have received adequate
17 consideration for all such Settled Class Claims;

18 NOW THEREFORE, subject to approval by both the Bankruptcy Court and the King County
19 Superior Court in the Actions as provided herein, the Parties stipulate and agree that, in consideration of
20 the promises and covenants set forth in this Amended Agreement and upon the entry by the King County
21 Superior Court of a Final Approval Order and the occurrence of the Effective Date, the Actions and the
22 Claims shall be fully settled, compromised and dismissed with prejudice upon the terms and conditions
23 set forth below.

1 I. DEFINITIONS

2 As used in this Amended Agreement and the exhibits hereto, in addition to any definitions
3 elsewhere in this Amended Agreement, the following capitalized terms shall have the meanings set forth
4 below:

5 1.01 "Actions" means putative class actions against (i) GMACM captioned *Alan Gardner, et*
6 *al. v. GMAC Mortgage, LLC*, Case No. 10-2-36902-3 SEA and (ii) Homecomings captioned *Tiffany*
7 *Smith, et al. v. Homecomings Financial, LLC*, Case No. 11-2-10126-6 SEA, which are both pending in
8 King County Superior Court.

9 1.02 "Administration Costs" means the costs of administering the Settlement by the Claims
10 Administrator, including, but not limited to, the costs of mailing the all Class Notices to the Settlement
11 Class Members, providing Awards to Award Recipients and administering the Settlement Fund.

12 1.03 "Amended Agreement" means this Amended Class Action Settlement Agreement,
13 including all exhibits hereto.

14 1.04 "Attorney Fee Award" means the amount awarded by the Court to be paid to Plaintiffs'
15 Counsel from the Settlement Fund, such amount to be in full and complete satisfaction of Plaintiffs'
16 Counsel's claim or request (and any request made by any other attorneys) for payment of attorney fees,
17 costs, disbursements and compensation in the Actions.

18 1.05 "Award" means the amount remitted by the Claims Administrator to Award Recipients
19 out of the Settlement Fund as provided in Sections V and VI of this Amended Agreement.

20 1.06 "Award Expiration Date" means the date ninety (90) calendar days after the issuance by
21 the Claims Administrator of checks paying Awards.

22 1.07 "Award Recipients" means all Settlement Class Members *other than* those Settlement
23 Class Members meeting at least one of the following conditions: (1) the Class Notice mailed to them
24 was returned as undeliverable after the initial mailing and after the Claims Administrator re-mailed the
25 Class Notice as required by Section VIII of this Amended Agreement; or (2) the Claims Administrator
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1 has otherwise determined that the Settlement Class Member does not reside at the address used for
2 mailing or re-mailing the Class Notice, including, but not limited to, by the return as undeliverable of the
3 Class Notice mailed pursuant to the Original Settlement Agreement.

4 1.08 "Bankruptcy Court" means the U.S. Bankruptcy Court, Southern District of New York,
5 which is presiding over the Bankruptcy Proceeding.

6 1.09 "Bankruptcy Proceeding" means the jointly administered Chapter 11 cases styled *In re*
7 *Residential Capital, LLC*, Case No. 12-12020 (MG), pending in the Bankruptcy Court.

8 1.10 "Claims" means the two Proofs of Claim Plaintiffs' Counsel filed in the Bankruptcy
9 Proceeding on October 23, 2012 on behalf of the putative class in the Gardner Action and on behalf of
10 the putative class in the Smith Action.

11 1.11 "Claims Administrator" means Tilghman & Co., P.C., or, in the event Tilghman & Co.,
12 P.C., declines or is unable to act as the Claims Administrator, such other vendor as is acceptable to the
13 Settling Defendants.

14 1.12 "Class Member" means a member of the Settlement Class. When one or more person
15 was obligated on a single Loan, those persons collectively shall be treated as only one Class Member.

16 1.13 "Class Notice" means the mailed notice of this Settlement that is contemplated by this
17 Amended Agreement, substantially in the form attached hereto as Exhibit 2.

18 1.14 "Court" means the Superior Court of Washington for King County.

19 1.15 "Defendants' Counsel" means Thomas J. Cunningham, J. Matthew Goodin, and Regina
20 J. McClendon, each of LOCKE LORD LLP.

21 1.16 "Effective Date" means the date on which Final Approval occurs.

22 1.17 "Final Approval Hearing" means the final hearing to be conducted by the Court in
23 connection with the determination of the fairness, adequacy and reasonableness of this Amended
24 Agreement and the proposed Settlement of the Actions and Claims, and with Plaintiffs' Counsel's
25 application for the Attorney Fee Award and the Representative Plaintiff Awards.

1 1.18 "Final Approval" means the last date on which all of the following have occurred:

2 (a) The court in the Bankruptcy Proceeding has issued all necessary orders
3 approving the establishment of the Settlement Fund as described in the Amended Agreement.

4 (b) The Court has issued all necessary orders under CR 23 approving of the
5 Settlement in a manner substantially consistent with the terms and intent of this Amended
6 Agreement, including the Final Approval Order;

7 (c) The Court enters a judgment, included as part of the Final Approval Order,
8 (i) dismissing all claims in the Action with prejudice, and (ii) finally approving the Settlement in
9 a manner substantially consistent with the terms and intent of this Amended Agreement;

10 (d) Either: (i) thirty (30) days have passed after entry of the Final Approval Order
11 and within such time no appeal is taken from the Final Approval Order and no motion or other
12 pleading has been filed with the Court or any appellate court to set aside or in any way alter the
13 judgment and/or orders of the Court finally approving the Settlement; or (ii) all appellate,
14 reconsideration, or other forms of review and potential review of the Court's orders and
15 judgment finally approving the Settlement are exhausted or become unavailable by virtue of the
16 passage of time, and the Court's orders and judgment are upheld, or not altered in a manner that
17 is substantially inconsistent with the judgment contemplated by subparagraph (b) *provided that*
18 and without limitation, any change or modification that may increase the Settling Defendants'
19 liability, or reduce the scope of the Release, or reduce the scope of the Settlement Class shall
20 prevent the occurrence of Final Approval at the sole option of the Settling Defendants; and

21 (e) No Party with a right to do so has terminated the Amended Agreement.

22 1.19 "Final Approval Order" means the Court's Final Judgment and Order of Dismissal with
23 Prejudice, substantially in the form attached hereto as Exhibit 3, which, among other things, approves
24 this Amended Agreement and the Settlement as fair, adequate and reasonable and confirms the final
25 certification of the Settlement Class.

1 1.20 “*Gardner Action*” means the putative class action lawsuit captioned *Alan Gardner, et al.*
2 *v. GMAC Mortgage, LLC*, Case No. 10-2-36902-3 SEA, pending in King County Superior Court.

3 1.21 “GMACM” means GMAC Mortgage, LLC.

4 1.22 “Homecomings” means Homecomings Financial, LLC.

5 1.23 “Loan” means a residential mortgage loan of a Class Member secured by property
6 located in the State of Washington upon which the Class Member was an obligor and that can qualify
7 him, her, or them as a member of the Settlement Class.

8 1.24 “Notice Date” means the date on which the Class Notice is mailed.

9 1.25 “Opt Out” means a Settlement Class Member (i) who timely submits a properly
10 completed and executed Request for Exclusion, and (ii) who does not rescind that Request for Exclusion
11 before the end of the Opt Out Period, and (iii) as to which there is not a successful challenge to the
12 Request for Exclusion.

13 1.26 “Opt Out Period” means the period commencing on the Notice Date and ending forty-
14 five (45) calendar days thereafter during which Settlement Class Members may submit a timely Request
15 for Exclusion. The last day of the Opt Out Period shall be specifically set forth in the Class Notice.

16 1.27 “Original Settlement” means the Class Action Settlement Agreement between the
17 Plaintiffs and Settling Defendants presented to and preliminarily approved by the Court on March 15,
18 2012.

19 1.28 “Parties” mean Plaintiffs, GMACM, and Homecomings.

20 1.29 “Person” means an individual, marital community, corporation, partnership, limited
21 partnership, limited liability company, association, joint stock company, estate, legal representative,
22 trust, unincorporated organization, and any other type of legal entity, and their or its respective heirs,
23 predecessors, successors, representatives and assigns.

24 1.30 “Plaintiffs’ Counsel” means (i) Berry & Beckett PLLP; (ii) Williamson & Williams;
25 (iii) Schroeter Goldmark & Bender; (iv) any other firms, professional legal corporations, partnerships,
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1 other entity or attorney that, to the knowledge of Class Counsel as of the date of this Amended
2 Agreement have represented or purport to represent a Class Member with respect to matters within the
3 scope of the Release; (v) any law firm, professional legal corporation, partnership, or other entity or
4 attorney that has or may claim to have a right to any attorneys' fees or costs in connection with the
5 Actions; and (vi) each partner, shareholder, or other part or full owner of any of the foregoing.

6 1.31 "Potential Class Members" means all Persons from whom (a) GMACM collected and
7 retained a Substitution Recording Fee, during the period from October 20, 2004 to the date of this
8 Amended Agreement, in connection with the payoff of a Loan serviced by GMACM; or (b)
9 Homecomings collected and retained a Substitution Recording Fee, during the period from March 18,
10 2005 to the date of this Amended Agreement, in connection with the payoff of a Loan serviced by
11 Homecomings.

12 1.32 "Preliminary Approval Order" means the Court's order granting, among other things,
13 conditional certification of the Settlement Class, preliminary approval of this Amended Agreement and
14 the Settlement, and approval of the form and method of Class Notice, substantially in the form attached
15 hereto as Exhibit 1.

16 1.33 "Preliminary Approval Date" means the date on which the Preliminary Approval Order
17 is entered by the Court.

18 1.34 "Release(s)" means the release(s) set forth in Section XII of this Amended Agreement.

19 1.35 "Released Party or Parties" means GMACM, Homecomings, and each of their
20 respective predecessors, successors, parents, subsidiaries, affiliates and assigns, together with their past,
21 present and future officers (whether acting in such capacity or individually), directors, employees,
22 independent contractors, shareholders, investors, owners of any kind, representatives, controlling
23 persons, partners, joint ventures, associates, attorneys, accountants, service providers, agents, managers,
24 consultants, insurers, reinsurers, subrogees, trustees and creditors, including without limitation, the heirs,

1 marital communities, executors, administrators, custodians, successors and assigns of any or all of them,
2 or anyone acting or purporting to act for them or on their behalf.

3 1.36 "Releasing Party or Parties" means Plaintiffs and each Settlement Class Member or any
4 Person acting on behalf of or claiming by or through a Settlement Class Member, that Settlement Class
5 Member's spouse, marital community, heir, associate, co-owner, attorney, agent, administrator, devisee,
6 predecessor, successor, parent, subsidiary, affiliate, custodian, agent, representative of any kind,
7 shareholder, partner, director, employee, owner of any kind, custodian, executor, trustee, administrator,
8 subrogee or assignee.

9 1.37 "Representative Plaintiffs" means Alan Gardner and Tiffany Smith, each individually
10 and in their capacity as proposed representatives of the Settlement Class.

11 1.38 "Representative Plaintiffs' Award" means the amount, if any, that is approved by the
12 Court for payment to the Representative Plaintiffs for acting as plaintiffs and class representatives in the
13 Actions.

14 1.39 "Request for Exclusion" means a fully completed and properly executed written request
15 that is delivered to the Claims Administrator by a Settlement Class Member under Section IX of this
16 Amended Agreement and is postmarked on or before the end of the Opt Out Period. For a Request for
17 Exclusion to be properly completed and executed, it must (a) state the Settlement Class Member's full
18 name, address, telephone number, and the last four digits of his/her Social Security Number; (b) contain
19 the Class Member's personal and original signature or the original signature of a person previously
20 authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf
21 of the Class Member with respect to a claim or right such as those asserted in the Actions (*i.e.*,
22 conformed, reproduced, facsimile, or other non-original signatures are not valid); and (c) state
23 unequivocally the Settlement Class Member's intent to be excluded from the Settlement. In those cases
24 where a Settlement Class Member's Request for Exclusion includes persons who were co-obligors on
25 the same loan, the Settlement Class Member's Request for Exclusion shall be deemed to be properly
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1 completed and executed as to that loan only if all obligors elect to and validly opt-out in accordance with
2 the provisions of this paragraph. If a Settlement Class Member wishes to opt out with respect to fewer
3 than all of the loans for which s/he is eligible for reward, the Request for Exclusion must specify the
4 loan(s) as to which the Settlement Class Member is opting out by identifying the loan(s) as to which the
5 Settlement Class Member is opting out by loan number, property address or date of loan. If a Settlement
6 Class Member is submitting a Request for Exclusion as to more than one loan and the Request for
7 Exclusion does not specifically identify the loan as to which the Settlement Class Member is opting out,
8 the Settlement Class Member will be deemed to be requesting exclusion as to all loans. Settlement Class
9 Members may, but are not required to use the Request for Exclusion form appended as Exhibit 4 to this
10 Amended Agreement, which shall be posted on Class Counsel's website with this Amended Agreement.

11 1.40 "Settlement" means the resolution of the matters within the scope of this Amended
12 Agreement, the Settled Class Claims, and the Release.

13 1.41 "Settlement Fund" means TWO HUNDRED EIGHTY-FIVE THOUSAND DOLLARS
14 (\$285,000), the aggregate and absolute maximum amount that the Settling Defendants will become
15 obligated to pay by operation of the Amended Class Action Settlement Agreement, if it receives Final
16 Approval.

17 1.42 "Settlement Fund Account" means the account established and maintained by the
18 Claims Administrator or, at the discretion of the Settling Defendants, the Settling Defendants, into which
19 the Settlement Fund will be deposited.

20 1.43 "Settlement Class" means all Potential Class Members, excluding: (i) the Settling
21 Defendants, any entity in which either of the Settling Defendants has a controlling interest, and the
22 Settling Defendants' legal representatives, assigns and successors; (ii) the judge and staff to whom the
23 Actions and Bankruptcy Proceeding are assigned, and any member of the judges' immediate family, and
24 (iii) all Opt Outs. The Settlement Class is being proposed for certification solely for settlement purposes
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1 under CR 23(b)(3) and without waiver of any contention by the Settling Defendants of any challenges or
2 defenses to the existence or propriety of a certifiable class under CR 23.

3 1.44 "Settled Class Claims" means collectively any and all claims, demands, rights,
4 liabilities, suits, matters, obligations, damages, losses, costs, actions and causes of action of every nature
5 and description whatsoever, in law or equity, known or unknown, latent or patent, asserted, unasserted or
6 that might have been asserted (including, without limitation, assigned claims and common law claims for
7 breach of contract, unjust enrichment, violations of any Consumer Protection Act or state or federal
8 statutes, rules or regulations) either directly, in a representative capacity or in any other capacity, by the
9 Releasing Parties against the Released Parties, arising from or in any way relating to the Settling
10 Defendants' demand for, or collection or retention from Settlement Class Members of, Substitution
11 Recording Fees or the Settling Defendants' making of alleged misrepresentations, omissions, statements,
12 misleading disclosures or failures to disclose information about such Substitution Recording Fees.
13 Settled Class Claims include without limitation Claims asserted in the Bankruptcy Proceeding, Unknown
14 Class Claims and all claims asserted in any complaint on file in the Actions, and all claims alleged or
15 asserted, or which could have been alleged or asserted, against the Released Parties which arise from the
16 alleged acts, omissions, representations, facts, events, matters, transactions or occurrences at issue in the
17 Actions.

18 1.45 "Settlement Class Member" means a Person in the Settlement Class as of the Effective
19 Date. When more than one person was obligated on a single loan, those Persons collectively shall be
20 treated as only one Settlement Class Member. Further, if a Settlement Class Member had two or more
21 loans potentially entitling the Settlement Class Member to relief under this Amended Agreement, the
22 Settlement Class Member shall be considered a separate Settlement Class Member as to each such loan,
23 **provided that** such Settlement Class Members need receive only one Class Notice under this Amended
24 Agreement for all such loans and, if Award Recipients, may receive a single, combined Award check for
25 all such loans.

1 1.46 “Settling Defendants” means GMAC Mortgage, LLC and Homecomings Financial,
2 LLC.

3 1.47 “*Smith Action*” means the putative class action lawsuit *Tiffany Smith, et al. v.*
4 *Homecomings Financial, LLC*, Case No. 11-2-10126-6 SEA, currently pending in King County Superior
5 Court.

6 1.48 “Substitution Recording Fee” means any fee(s) that the Settling Defendants incurred to
7 record substitution of trustee or appointment of substitute trustee documents with county auditors in the
8 State of Washington when borrowers paid off loans serviced by one of the Settling Defendants.

9 1.49 “Unknown Class Claims” means any and all claims by the Releasing Parties against the
10 Released Parties arising from the facts and circumstances that were alleged in the Actions based on facts
11 which now exist, may hereafter exist, or have previously existed that the Releasing Parties may hereafter
12 discover in addition to, or different from, those which Class Counsel and the Releasing Parties now
13 know or believe to be true concerning the Settled Class Claims, without regard to the subsequent
14 discovery of those facts by the Releasing Parties or the existence of any such different or additional facts.
15 For purposes of this Amended Agreement, the Parties hereby waive any and all rights which they may
16 have under or pursuant to (i) the provisions of Section 1542 of the Civil Code of the State of California
17 and/or (ii) the provisions of any similar statutory, regulatory or common law of any state or of the United
18 States. Section 1542 of Civil Code of the State of California provides:

19 A general release does not extend to claims which the creditor does not know or suspect
20 to exist in his or her favor at the time of executing the releases, which if known by him
21 or her must have materially affected his or her settlement with the debtor.

22 The Parties understand fully the statutory language of Section 1542 of the Civil Code of the State of
23 California and, having been so apprised, nevertheless agree that Plaintiffs and the Settlement Class
24 Members release all Unknown Claims as provided above. This reference to California law does not
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1 evince and shall not be construed as indicating an intent by the Parties that California law should apply
2 to this Amended Agreement.

3 Other terms are defined in the text of this Amended Agreement, and shall have the meaning
4 given those terms in the text. The Parties intend that in connection with all documents related to the
5 Settlement that defined terms as used in other documents shall have the meaning given to them in this
6 Amended Agreement.

7 **II. BANKRUPTCY APPROVAL**

8 2.01 This Amended Agreement is contingent upon the approval by a final order of the
9 Bankruptcy Court of the resolution of the Claims as contemplated in the Amended Agreement,
10 confirmation of the Chapter 11 bankruptcy plan ("Plan") in the Bankruptcy Proceeding, and the
11 Effective Date (as defined in the Plan) of the Plan having occurred.

12 2.02 Promptly after the execution of this Amended Agreement, Defendants' Counsel shall
13 submit this Amended Agreement to the Bankruptcy Court in connection with a joint motion pursuant to
14 Federal Rule of Bankruptcy Procedure 9019 for an order approving this Amended Agreement.

15 **III. PRELIMINARY SETTLEMENT APPROVAL**

16 3.01 Promptly upon obtaining the approval of the Bankruptcy Court, as contemplated in
17 Section 2 above, Plaintiffs' Counsel shall submit this Amended Agreement to the Court and shall request
18 that the Court enter the Preliminary Approval Order, which, consistent with the terms of this Amended
19 Agreement, shall:

- 20 1. Suspend all current deadlines in the case schedule for the Actions and stay all
21 proceedings other than those related to approval of the Settlement;
 - 22 2. Approve the form, contents and method of dissemination of the Class Notice;
 - 23 3. Schedule appropriate opt-out, objection, and other settlement-related dates and
24 deadlines to be included in the Class Notice; and
 - 25 4. Schedule the Final Approval Hearing.
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1 3.02 The Settling Defendants will not oppose entry of the Preliminary Approval Order so
2 long as it is substantially in the form attached to this Agreement as *Exhibit L*, and is otherwise consistent
3 with this Amended Agreement.

4 3.03 At the time of Preliminary Approval, the Parties shall request a date for the Final
5 Approval Hearing that is at least twenty-five (25) calendar days after the end of the Opt Out Period.

6 3.04 The Parties, through their counsel, shall cooperate, assist and undertake reasonable
7 actions in order to accomplish these required events on the schedule set by the Court.

8 **IV. CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES ONLY**

9 4.01 The continuing conditional certification of the Settlement Class for purposes of
10 effectuating this Settlement shall be without prejudice to, or waiver of, the Settling Defendants' rights to
11 contest all issues in the Actions and in the Claims asserted in the Bankruptcy Proceeding, including,
12 without limitation, all issues under CR 23 relating to the certification of a class, if this Amended
13 Agreement is terminated, is not approved, or if the Effective Date does not occur for any reason. The
14 Settling Defendants' agreement not to oppose continuing certification of the Settlement Class for
15 settlement purposes is being made without any admission of liability, responsibility or wrongdoing, and
16 without any admission or concession about the merits of the claims asserted on behalf of the Settlement
17 Class or the existence or certifiability of the class as alleged in the Actions.

18 **V. SETTLEMENT CONSIDERATION**

19 5.01 In consideration for the Settlement and the Release provided herein, upon execution of
20 this Amended Agreement, the Settling Defendants will deliver the Settlement Fund in the amount of
21 TWO HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$285,000) to Locke Lord LLP, as escrow
22 agent, to be held for further disbursement by Locke Lord LLP in accordance with the terms of this
23 Amended Agreement. The Settlement Fund will be the aggregate and absolute maximum amount that
24 the Settling Defendants will become obligated to pay by operation of the Amended Class Action
25 Settlement Agreement, if it receives Final Approval, and will be the only source of payment for (a)

1 Awards to Settlement Class Members who are Award Recipients; (b) the Attorneys' Fee Award, if any,
2 to Class Counsel; (c) the Settlement Administration Costs; and (d) the Representative Plaintiffs' Award,
3 if any.

4 5.02 The Award that will be payable to each Award Recipient after the Effective Date will be
5 determined according to the following formula:

6 *Settlement Fund (\$285,000) minus (-) Administration Costs minus (-) Representative*
7 *Plaintiffs' Awards minus (-) Attorneys' Fee Award divided by (÷) total number of Award*
8 *Recipients.*

9 It is estimated that the Award payable to each Award Recipient will be approximately \$1.65. After the
10 Award is determined in accordance with the above formula, this will constitute the absolute maximum
11 amount that any Award Recipient will be entitled to receive under this Amended Agreement.

12 5.03 The Representative Plaintiffs may petition the Court, without opposition from the
13 Settling Defendants, for a Representative Plaintiffs' Award, payable exclusively from the Settlement
14 Fund, up to the following amounts: (a) Alan Gardner – \$8,000; (b) Tiffany Smith – \$4,000.

15 5.04 Locke Lord LLP, as escrow agent, will deliver the Settlement Fund to the Claims
16 Administrator within fifteen (15) business days after the Effective Date. The Claims Administrator will
17 promptly mail Award checks to the Award Recipients as provided in Section VI below.

18 5.05 No later than thirty (30) days after the Award Expiration Date, the Claims Administrator
19 shall distribute amounts remaining in the Settlement Fund by checks payable to the Legal Foundation of
20 Washington (50%) and the Northwest Consumer Law Center (50%) .

21 **VI. THE AWARD PAYMENT PROCESS**

22 6.01 No later than ten (10) business days after the end of the Opt Out Period, the Claims
23 Administrator shall provide a report to the Settling Defendants' counsel indicating which Settlement
24 Class Members are Award Recipients.

1 6.02 The Claims Administrator shall mail the Award checks within five (5) business days
2 after receiving the Settlement Fund from the Settling Defendants. All Award checks shall be mailed on
3 the same day.

4 6.03 Award checks will be valid and redeemable only if they are cashed by the Award
5 Recipient before the Award Expiration Date. The Award checks will include a legend indicating that
6 they are invalid, cannot be cashed and will not be honored after the Award Expiration Date. The Final
7 Approval Order will include a provision to this effect and will direct the bank holding the Settlement
8 Fund Account that it is prohibited from paying or honoring any Award check after the Award Expiration
9 Date.

10 6.04 Settlement Class Members shall be bound by the Releases of the Settled Class Claims as
11 provided in this Amended Agreement and in the Final Approval Order whether or not (1) they are Award
12 Recipients, (2) they cash an Award check sent to them by the Claims Administrator, or (3) they in fact
13 received the Class Notice.

14 6.05 The Claims Administrator's and the Settling Defendants' respective obligations with
15 respect to the distribution of the Class Notice, the Awards, the Settlement Administration Costs, the
16 Attorney Fee Award, the Representative Plaintiff Award and the amounts (if any) remaining in the
17 Settlement Fund after payment of Awards and the Attorney Fee Award shall be performed reasonably
18 and in good faith. So long as they do, the Settling Defendants and the Claims Administrator shall not be
19 liable for erroneous, improper, or inaccurate distribution, and the releases in this Amended Agreement
20 and the Final Approval Order and any judgment shall be effective as of the Effective Date as to
21 Plaintiffs, Plaintiffs' Counsel, and every Settlement Class Member notwithstanding any such error and
22 regardless of whether such error is corrected.

23 **VII. CLAIMS ADMINISTRATION: COSTS, REVIEW**

24 7.01 All reasonable and necessary expenses incurred by the Claims Administrator in
25 administering this Amended Agreement, including without limitation the cost of sending the Class
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1 Notice and related materials to Settlement Class Members, the cost of sending the Class Notice and
2 related materials pursuant to the Original Settlement Agreement, and of implementing and administering
3 the Award payment process, shall be paid and reimbursed exclusively from the Settlement Fund.

4 7.02 Plaintiffs' Counsel shall have the right until the Award Expiration Date to review
5 materials received or generated by the Claims Administrator. Such review may be conducted solely for
6 purposes of implementing the Settlement.

7 **VIII. NOTICE TO THE CLASS**

8 8.01 Upon Preliminary Approval, and as the Court may direct consistent with the notice plan
9 set forth below, Plaintiffs' Counsel and the Settling Defendants shall cause the Claims Administrator to
10 provide the Class Notice to the Settlement Class Members.

11 8.02 The Settling Defendants have provided the Claims Administrator with last known
12 mailing addresses reflected in its records for all Settlement Class Members. The Claims Administrator
13 shall update this address information using the United States Postal Service National Change of Address
14 ("NCOA") database once before mailing the Class Notice to the Settlement Class Members.

15 8.03 As soon as is reasonably practicable, but in no event more than thirty (30) calendar days
16 after the Preliminary Approval Date, the Claims Administrator shall mail the Class Notice to the
17 Settlement Class Members at the address provided by the Settling Defendants or such address as may be
18 provided by the NCOA update, provided that the Claims Administrator shall have no obligation to mail
19 the Class Notice to Settlement Class Members whose addresses have already been determined to be
20 invalid during the mailing of Class Notice pursuant to the Original Settlement Agreement or who validly
21 executed a Request for Exclusion in response to such Class Notice.

22 8.04 The Claims Administrator will re-mail once all returned Class Notices that the Claims
23 Administrator receives with forwarding addresses noted on them or where the Claims Administrator can
24 obtain an updated address via a reasonable address trace. The Claims Administrator shall have no
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1 obligation to forward re-mail or re-deliver any other Class Notices. Nothing in this paragraph shall be
2 construed as extending the Opt Out Period or the Claims Period.

3 **IX. OPT OUT RIGHTS**

4 9.01 Potential Settlement Class Members may exclude themselves from the Settlement Class
5 at any time during the Opt Out Period in accordance with this Section IX.

6 9.02 To be excluded from the Settlement Class, a Potential Settlement Class Member must
7 return a written, complete and properly executed Request for Exclusion to the Claims Administrator
8 postmarked before the end of the Opt Out Period, provided that Potential Settlement Class Members who
9 already submitted a valid Request for Exclusion in response to the Class Notice mailed pursuant to the
10 Original Settlement Agreement shall be considered already excluded from the Settlement Class.

11 9.03 Except for Opt Outs, each Person in the Settlement Class will be deemed to be a
12 Settlement Class Member for all purposes under this Amended Agreement. Settlement Class Members
13 will be bound by the Final Approval Order and the Release concerning the Settled Class Claims in this
14 Amended Agreement, whether or not the Settlement Class Member is an Award Recipient, cashes an
15 Award Check or actually received the Class Notice or Request for Exclusion form.

16 9.04 Opt Outs shall not (i) be bound by any orders or judgments entered in this Action; (ii) be
17 entitled to relief under or be affected by this Amended Agreement; (iii) gain any rights by virtue of this
18 Amended Agreement; or (iv) be entitled to object to any aspect of this Amended Agreement.

19 9.05 A Potential Settlement Class Member who timely files a written Request for Exclusion
20 with the Claims Administrator may subsequently withdraw the Request for Exclusion by filing with the
21 Claims Administrator written notification of such withdrawal. Such written notification of withdrawal
22 of the Request for Exclusion must be actually received by the Claims Administrator before the end of the
23 Opt Out Period.

1 purposes of interpreting and enforcing the terms, conditions and obligations under this Amended
2 Agreement.

3 **XII. RELEASES**

4 12.01 Upon the Effective Date, the Releasing Parties, whether or not they received an Award,
5 will be deemed by this Amended Agreement and by operation of the Final Approval Order to have
6 completely and unconditionally released, forever discharged and acquitted the Released Parties from any
7 and all of the Settled Class Claims, including Unknown Class Claims and Claims asserted in the
8 Bankruptcy Proceeding.

9 12.02 Upon the Effective Date, pursuant to the Final Approval Order, the Releasing Parties
10 and anyone claiming through or on behalf of any of them will be forever barred and enjoined from
11 commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any
12 court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or
13 any other forum, directly, representatively or derivatively, asserting against the Settling Defendants or
14 any of the Released Parties any claims that constitute any of the Settled Class Claims, including
15 Unknown Class Claims and the Claims asserted in the Bankruptcy Proceeding.

16 12.03 Nothing in this Section XII shall affect a release for any claim arising out of or relating
17 to a breach of this Amended Agreement.

18 **XIII. CLASS COUNSEL FEES AND COSTS**

19 13.01 Plaintiffs' Counsel may apply to the Court for an award of attorneys' fees, payable
20 solely from the Settlement Fund, in an amount not to exceed thirty percent (30%) of the Settlement
21 Fund, plus actual litigation costs. Plaintiffs' Counsel will apply to the Court for approval of the Attorney
22 Fee Award and will serve Defendants' Counsel with such application no later than six (6) court days
23 before the Final Approval Hearing. The Settling Defendants shall not object to Plaintiffs' Counsel's
24 application for the Attorney Fee Award, except that the Settling Defendants reserve the right to dispute
25 any statements in such application that are inconsistent with this Amended Agreement.

1 jurisdiction over the Parties to this Amended Agreement, and all Settlement Class Members to
2 administer, supervise, construe and enforce this Amended Agreement in accordance with its terms for
3 the mutual benefit of the Parties.

4 **XV. NO ADMISSIONS; NO USE**

5 15.01 This Amended Agreement, whether or not consummated or approved by the Court, and
6 any proceedings taken or statements made pursuant to this Amended Agreement or papers filed seeking
7 approval of this Amended Agreement, are not and shall not in any event be construed as, offered in
8 evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession or an
9 admission of any kind by any of the Parties of the truth or untruth of any fact alleged or the validity or
10 invalidity of any claim or defense that has been, could have been, or in the future might be asserted in
11 any litigation, court of law or equity, proceeding, arbitration, tribunal, investigation, government action,
12 administrative proceeding or other forum, or of any liability, responsibility, fault, wrongdoing or
13 otherwise of the Settling Defendants or Plaintiffs. The Settling Defendants have denied and continue to
14 deny the claims asserted by Plaintiffs.

15 15.02 Notwithstanding the foregoing, nothing contained herein shall be construed to prevent a
16 party from offering this Amended Agreement into evidence for the purposes of enforcement of this
17 Amended Agreement.

18 **XVI. MISCELLANEOUS PROVISIONS**

19 16.01 This Amended Agreement, including all exhibits hereto, shall constitute the entire
20 Amended Agreement among the Parties and shall supersede any previous agreements, representations,
21 communications and understandings among the Parties. This Amended Agreement may not be changed,
22 modified, or amended except in writing signed by all Parties.

23 16.02 This Amended Agreement shall be construed under and governed by the laws of the
24 State of Washington, applied without regard to laws applicable to choice of law.

1 16.03 This Amended Agreement shall be deemed to have been drafted jointly by the Parties,
2 and any rule that a document shall be interpreted against the drafter shall not apply to this Amended
3 Agreement.

4 16.04 This Amended Agreement may be executed by the Parties or their authorized
5 representatives in one or more counterparts, each of which shall be deemed an original but all of which
6 together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as
7 original signatures.

8 16.05 This Amended Agreement shall be binding upon and inure to the benefit of the
9 Settlement Class Members, the Parties, the Released Parties and their respective heirs, successors and
10 assigns.

11 16.06 The headings of the Sections of this Amended Agreement are included for convenience
12 only and shall not be deemed to constitute part of this Amended Agreement or to affect its construction.

13 16.07 Any notice, instruction, application for Court approval or application for Court orders
14 sought in connection with this Amended Agreement or other document to be given by any Party to any
15 other Party shall be in writing and delivered personally or sent by registered or certified mail, postage
16 paid, if to the Settling Defendants to the attention of Defendants' Counsel, or if to the Settlement Class
17 to Plaintiffs' Counsel, or to other recipients as the Court may specify.

18 **XVII. TERMINATION OF THIS AMENDED AGREEMENT**

19 17.01 This Amended Agreement shall, without notice, be automatically terminated if the Final
20 Approval Order is not entered, or if the Final Approval Order is reversed on appeal and the reversal
21 becomes final or the Effective Date does not occur for any other reason. Upon termination, all Parties
22 shall be restored to their respective positions immediately prior to the date on which this Amended
23 Agreement is signed by all Parties.

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17.02 In the event of termination, this Amended Agreement shall have no further force or effect regarding the Parties’ rights and the Parties shall jointly request the Court to hold a scheduling conference for the purpose of establishing a new case schedule and trial date for the Actions.

XVIII. AUTHORITY TO SIGN

Any individual signing this Amended Agreement on behalf of any Person represents and warrants that he or she has full authority to do so.

[Remainder of Page Blank – Signature Page Follows]


1 FOR THE PLAINTIFFS AND


2 SETTLEMENT CLASS:

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6 BERRY & BECKETT PLLP

WILLIAMSON & WILLIAMS

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9 By: Guy W. Beckett, WSBA No. 14939


By: Rob Williamson, WSBA No. 11387

10
11 Date: 12/12/13

Date: 12/11/13

12
13

14 SCHROETER GOLDMARK & BENDER

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16 

17 By: Adam J. Berger, WSBA No. 20714

18
19 Date: 12/11/13

23 FOR THE DEFENDANTS:

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GMAC MORTGAGE, LLC



By: WILLIAM R. THOMPSON
GENERAL COUNSEL

Date: 12/11/13

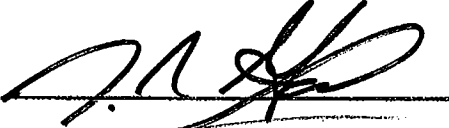
HOMECOMINGS FINANCIAL, LLC



By: WILLIAM R. THOMPSON
GENERAL COUNSEL

Date: 12/11/13

LOCKE LORD LLP



By: J. Matthew Goodin, *pro hac vice*

Date: 12/11/13

1 **EXHIBITS**

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3 **Preliminary Approval Order**

4 **Notice**

5 **Final Approval Order**

6 **Request for Exclusion**

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