SPECIAL MASTER'S SECOND REPORT

October 4, 2012

On May 31, I forwarded to you a report of my activities through May 29. That report (the "First Report") is filed in the ECF as Document 824.

Please accept this report as an update on my activities since then through September 28, 2012. Again, please note that all information in this memo is based on the best information I have. There may be further adjustments as we receive additional information and clarifications.

As of September 28, there were 581 cases under my purview; I have reviewed Appendix A's from the plaintiffs in 503 of these cases.[1] Unless otherwise noted, all references and statistical information relate to those 503 cases. The caseload is up significantly from the 228 cases pending as of January 31. At one point, I was encouraged that the "pipeline" was slowing. Between August 29 and September 10, no new cases were filed. However, 34 new cases were filed since September 11. I will comment on that further below.

I. THE PROFILE OF THE PLAINTIFFS

A. Statistical Profile.

Of the 503 cases, 215 (or 43%) already have been foreclosed. With respect to the 215 cases involving foreclosed property, 173 of the plaintiffs (or 80%) still live there as a principal residence, and of those persons, 155 (or 72% of the foreclosed population) of the primary and/or co-borrowers are employed.

With respect to the 288 cases involving non-foreclosed properties, 265 (or 92%) of the primary and/or co-borrowers are employed.

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[1]For the one case that is filed as a class action, we are collecting Appendix A's from all plaintiffs, but only using the one as filed by the first named borrower for purposes of these statistics.

The median original mortgage size was $226,000. Only 30 of the 503 mortgages were over $400,000.

A fuller summary of the information tabulated from the completed Appendix A forms submitted by the plaintiffs is contained in Tab 1.

Other than the shift to a majority of the cases being non-foreclosed properties, I do not see any statistical significant difference in the profile of the plaintiffs from the cases referenced in the First Report.

B. Commentary.

Given the mortgage sizes involved, most of which were granted at a high point of the mortgage market, we are dealing with modest housing. Unfortunately, based on the information we are seeing, these properties, generally, have been very hard hit by valuation declines.

As a result of the recent settlement conferences, we have relatively current information on 63 properties which had first mortgages originally $400,000 or less. The mortgages ranged in size from $80,000 to $400,000.

Seventy-three percent (73%) of these houses now have first mortgages that are significantly underwater. The amount underwater ranges from $25,000 to $194,000. The average underwater amount is $165,000 and the median is $79,000. So a typical profile might look like a mortgage of $255,000 on a house now estimated to be worth $130,000 with an overhang of $125,000; or a $210,000 mortgage on a house now estimated to be worth $153,000 with an overhang of $57,000.

Additionally, given conversations with some of plaintiffs' counsel and cursory review of some of the financial information supplied, it is of concern that many of these plaintiffs overreached in assuming the debt loads they did and remain relatively naïve in what they can afford and what is realistic. Please note that while I believe people are responsible and accountable for their own lack of financial acumen, given the nature of these mortgages, I am concerned that they had plenty of "help" from mortgage originators who convinced the plaintiffs that they were making a financially savvy real estate investment and could afford it.

And for better or worse, many people believe if the "bank" lets you have the money, you can afford it.

In the previous paragraph, I referenced the "nature" of these mortgages. All are securitized product. But more importantly than that, from what I can see, virtually none of these mortgages were originated by any bank or credit union that operates locally (i.e., in the State of Rhode Island) with the possible exception of Bank of America and to a much more limited extent, RBS Citizens. Virtually all these mortgages seem to be the product of originations from mortgage brokers or other "outside" lenders that were then operating in what I assume was the "subprime" space.

Finally, there is no question in my mind that some of the plaintiffs are "gaming" the system. However, there also is no question in my mind that the majority of them are not. They are good people who for a variety of reasons (mixed in most cases – from being too aspirational, being too naïve, or being caught up in the real estate boom) overreached and are now suffering consequences in some ways not of their making.

II. USE AND OCCUPANCY PAYMENTS

As of September 28, use and occupancy payments were being billed on 464 of the 503 cases. The cases not being billed are a mix of lack of information, or the plaintiff no longer living at the premises, or the plaintiff claims to already be paying a court ordered U & O fee.

As was the case previously, the payment history has been generally good.

On September 27, we filed with the Court a report of the U & O payments we were holding as of September 15. (See ECF Document 1273.) As of October 3, 2012 we have collected and are holding in escrow over $850,000 in U & O payments.

III. PROGRESS TOWARD SETTLEMENT

Between August 7 and September 13, I held 131 settlement conferences.

A. Scheduling Process.

We used the information provided on the Exhibit A forms supplied by the defendants to facilitate selection. These forms indicated which of the defendants was the "real" party in interest. As the Court is aware, all cases involve multiple defendants and in cases of securitized finance, it can be difficult for a plaintiff to know who is really "in charge." Indeed, some of the responses indicated that parties not named were the real party in interest and had authority to settle.

Some defendants were active in seeking me out to schedule conferences. Others indicated a willingness. As a result, I tried to take defendants with the largest number of cases that, through their respective counsel, had either reached out or otherwise indicated a willingness to meet.

We then scheduled by plaintiff's attorney within defendant groups. While I consider specific settlements confidential, I am appending, as Tab 2, a list of the conferences we held, by defendant, and their present status.

A summary of certain key results is that of the 131 conferences, 81 resulted in requests for loan modifications, with documentation to be submitted in 74 of them, and 33 resulted in "cash for keys" negotiations.

As of this date, approximately nine cases have been resolved pending documentation, and one has been dismissed.

An exception in scheduling was made for FNMA / FHLMC cases. They are involved in a significant number of cases, but were not scheduled because I did not believe the result would be productive. I have made no secret of how troubled I am by these agencies and, to a lesser extent, their respective counsel. Most of the defendant servicers, off the record, describe how bureaucratic and difficult to deal with FNMA and FHLMC are. They already have cost our taxpayers billions. And lawyers who have clients like FNMA / FHLMC have the capacity to litigate indefinitely because their clients are unresponsive to good business solutions. So our taxpayer dollars are being utilized to fund a significant amount of lawyering that may not be productive from a business standpoint. Privately, counsel to other defendants also will say as much.

B. Settlement Issues.

Because of the number of pending modification applications, it is impossible for me to report definitively, at this time, on how productive that process will be. However, there are a number of concerns that have surfaced in the process. Because of these, I have yet to schedule further conferences.

The first concern is my desire to see the results of the loan modification applications. There are to be approximately 74 loan modification applications under review by, or scheduled to be sent to, 8 different servicers. If 90% are rejected, it makes little sense for me to "push" for more modifications. Conversely, if 70% are successful, the meetings will have been productive.

The second concern is administrative in nature.

There are still a number of loan modification packages yet to be submitted or remain incomplete. Of the 74 loan modification packages that were originally to be submitted, 26 have yet to be completed and 11 remain incomplete. Also, some offers have yet to be responded to. Thus, until there is substantial completion, I will not schedule more conferences.

I would note that most of the defendants are represented by larger firms with substantial resources. The plaintiffs' lawyers are sole practitioners or small offices. One lawyer in particular has over 400 of the cases before this Court. While he has added staff and displays serious, deep familiarity with almost every case we have reviewed for settlement, it is difficult for him to respond quickly and thoroughly.

Defendant servicers have repeatedly pointed out to me how delay in their receipt makes a plaintiff less likely to qualify for a modification and how incomplete packages not completed promptly leads to stale info and a need to start the cycle again. As noted, many of the packages submitted were incomplete, despite supposed review by plaintiffs' counsel.

The Court should consider imposing a penalty on plaintiffs' counsel for incomplete packages. Tardy submissions are more understandable, but completions should be taken care of by the plaintiffs and their counsel.

The plaintiffs' counsel occasionally complained of subsequent information requests. However, I believe those to be reasonable. (On the whole, these do not form part of the non-completion difficulties referenced above.)

Finally, I personally am not accustomed to the slow turning of the proverbial wheels of justice. We began settlement conferences on August 7, 2012. Resolution was reached (in the first few weeks) on a number of cases. The Court will note that as of September 30, exactly one dismissed stipulation has been filed. Some of this is due to the (understandably) complex nature of the dismissal agreements being crafted, the need to join all parties, including those not privy to the two-party settlement, etc. However, speed is apparently not one of the hallmarks of our system of justice.

C. The Special Master's office has received a number of requests that are reasonable and should be reflected on by the Court.

I noted earlier that in all cases multiple defendants have been sued. Some have nothing to do with these cases, others have been merged into another defendant, etc. Should the Court have a process for hearing dismissal applications for mechanical or technical reasons separately?

Similarly, in one case defendants allege that the real party in interest was not named because its presence would defeat diversity jurisdiction. Should there be a process for this?

D. Other Matters.

The Special Master's office is largely up to date with entering plaintiffs' information and is now issuing U & O bills on a regular, more timely basis upon receipt of new cases.

	As of September 28, 2012		As of January 31, 2012	
	Number/ Amount	% of Population	Number/ Amount	% of Population
Total Population Summary				
Plaintiffs	581		228	
Appendix As received	503	87%	221	97%
Reside in property as principal residence	438	75%	184	81%
Foreclosed	215	37%	134	59%
Non-foreclosed	288	50%	87	38%
Borrower or co-borrower employed	459	79%	198	87%
Largest mortgage size	$ 1,500,000		$ 1,500,000	
Smallest mortgage size	$ 55,825		$ 55,825	
Median mortgage size	$ 225,900		$ 229,000	
Mortgages > $400,000	30		19	
Foreclosed Population Summary				
Plaintiffs	215		134	
Reside in property as principal residence	173	80%	107	80%
Borrower or co-borrower employed	195	91%	118	88%
Borrower or co-borrower employed and reside in property as principal residence	155	72%	93	69%
Largest mortgage size	$ 984,000		$ 984,000	
Smallest mortgage size	$ 80,000		$ 80,000	
Median mortgage size	$ 224,000		$ 217,375	
Mortgages > $400,000	8		7	
Non-Foreclosed Population Summary				
Plaintiffs	288		87	
Reside in property as principal residence	265	92%	77	89%
Borrower or co-borrower employed	264	92%	80	92%
Borrower or co-borrower employed and reside in property as principal residence	243	84%	72	83%
Largest mortgage size	$ 1,500,000		$ 1,500,000	
Smallest mortgage size	$ 55,825		$ 55,825	
Median mortgage size	$ 228,900		$ 245,000	
Mortgages > $400,000	22		12	

Results of Settlement Conferences
September 30, 2012

	Cash for Keys			Modification					Property Purchase			
Defendant	In Negotiation	Accepted	Rejected	Submission Pending	Additional Information Required	Under Review	Approved	Rejected	External Financing Submission Pending	Approved	Rejected	Total*
1	0	0	0	0	0	0	0	0	0	0	0	0
2	8	0	1	4	10	7	1	0	0	0	0	31
3	3	0	0	0	0	0	0	0	4	0	0	7
4	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	1	0	0	8	0	1	0	0	10
6	1	0	0	6	1	0	0	0	0	0	0	8
7	0	1	0	1	0	0	0	0	2	0	0	4
8	0	0	0	0	0	0	0	0	0	0	0	0
9	12	6	1	14	0	30	0	0	3	0	0	66
Total	24	7	2	26	11	37	9	0	10	0	0	126

	Overall*				
Defendant	In Negotation	Probable Impasse*	Settled Pending Document-ation	Dismissed*	Total*
1	0	1	0	0	1
2	30	1	0	0	31
3	7	0	0	0	7
4	0	1	0	0	1
5	3	0	7	0	10
6	8	0	0	0	8
7	3	0	1	0	4
8	0	1	0	0	1
9	59	2	6	1	68
Total	110	6	14	1	131

* The Overall section is a summary of the Cash for Keys, Modification and Property Purchase categories. A total of 131 settlement conferences were conducted. In 4 of those conferences, no settlement offers were made and resulted in a probable impasse. In another settlement conference, it was determined that the defendant was not a party to the case and was subsequently dismissed. As such, these cases were not included in the Cash for Keys, Modification or Property Purchase categories.