

FCA allows a private person, known as a “Relator,” to bring a *qui tam* action for the person and for the United States Government.” *Id.* § 3730(b)(1). Such an action is filed under seal, and the government is given a period of time, plus extensions, to investigate the allegations and to decide whether or not to intervene and proceed with the action. *Id.* § 3739(b). If the government intervenes, it has the primary responsibility to proceed with the action. *Id.* 3730(c)(1). If the government elects not to proceed with the action, the person who initiated the case has the right to proceed. *Id.* §3730(c)(3). Whether or not the government intervenes, if there is a recovery, the United States is paid a majority of the recovery, and the Relator is entitled to a percentage of the recovery which varies within a specified range. *Id.* § 3730(d).

This case was filed by Lynn E. Szymoniak on November 12, 2010. Ms. Szymoniak filed this *qui tam* case and a parallel case in the United States District Court for the District of South Carolina, under the FCA, and similar State and municipal statutes. Both actions allege that defendants failed to transfer mortgages into residential mortgage backed securities (RMBS) purchased by the federal government, among others, and servicing misdeeds causing harm to the government.. There are thirty-six defendants named in the two cases, all residential mortgage backed security depositors, servicers, trustees or document custodians.¹

More specifically, Ms. Szymoniak alleges that when the defendants formed RMBS, they failed to obtain required mortgage assignments or to deliver original endorsed notes, thus failing, as a legal matter, to transfer mortgages into the securities. When loans included in the pools began to default, defendants falsified documents, misrepresented corporate authority and forged signatures to conceal their failure to obtain required documents at the formation of the trusts. Additionally, the Defendants made improper insurance claims to government insurers.

¹ There are twenty-three defendants in the Western District of North Carolina and fifteen in the District of South Carolina (two defendants overlap).

Among the defendants in the Relator's complaint in the Western District of North Carolina are: (1) Ally Financial, Inc. f/k/a GMAC, Inc.; (2) Bank of America as successor-in-interest to Countrywide Financial Corporation; (3) BAC Home Loan Servicing, LLP; (4) Banc of America Mortgage Securities, Inc.; (5) Chase Home Finance; (6) Citimortgage, Inc.; and (7) Wells Fargo Home Mortgage d/b/a America's Servicing Company (the "Settling Defendants").

On February 4, 2012, the United States District Court for the District of Columbia entered five Consent Judgments implementing settlement agreements between the United States and the Settling Defendants and their affiliates (the "Consent Judgments"). *See United States v. Bank of America et al.*, No. 12-civ-0361-RJC (D.D.C.) (Docket Nos. 10 to 14). The Consent Judgments released some of the claims alleged in the two *Szymoniak* cases against the Settling Defendants. Ninety-five million dollars (\$95,000,000) of the twenty five billion dollars (\$25,000,000,000.00) collectively paid under the Consent Judgments was allocated to the settlement of these claims.

The Consent Judgments resolved claims, and released conduct, beyond that alleged in the two *Szymoniak* complaints. In addition, not all of the claims against the Settling Defendants asserted in the two *Szymoniak* complaints were released in the Consent Judgments. Exhibits A through E to this Memorandum are copies of the Consent Judgments.

On March 7, 2012, Relator and the United States entered into a Relator's share agreement. Under that agreement, the United States agreed to pay Relator \$18 million as her share of the proceeds attributed in the Consent Judgments to the settlement of the claims she asserted against the Settling Defendants. Relator agreed, in turn, that the Consent Judgments constituted a fair, adequate, and reasonable resolution of the portion of her claims being settled.

Finally, Relator released the Settling Defendants, and affiliates of the Settling Defendants, to the same extent as the United States in the Consent Judgments.

All of the claims against the Settling Defendants asserted by Relator in this action that are not specifically released by the United States in the Consent Judgments, and all claims against defendants other than the Settling Defendants are preserved, and are not the subject of the dismissal requested here. The United States' investigation of the unreleased claims continues.

Any right Relator has to attorney's fees and costs pursuant to 31 U.S.C. § 3730(d) is not resolved or released by either the Consent Judgments or the Relator Share Agreement referenced above. Relator reserves any rights she has under that provision of the False Claims Act, and defendants do not waive any position they may have as to that issue.

Pursuant to the terms of the Consent Judgments and the Relator's Share Agreement, Relator and the United States ask the Court to dismiss the Settling Defendants for all of the claims that are released by the United States in Attachments A through E hereto.

Contemporaneously with this motion for partial dismissal, the United States is filing a Notice of Partial Intervention for the purpose of settlement.

Finally, there have been a number of partial lifts of the *qui tam* seal in this matter, but except as otherwise ordered the case remains under seal. The United States and Relator ask that the seal be partially lifted so that any order of dismissal, with non-settling defendants redacted,

be made available to the public by the United States, the Relator or the settling defendants. The United States and Relator request that the matter otherwise remains under seal.

Respectfully submitted,

TONY WEST
Assistant Attorney General
Civil Division

ANNE M. TOMPKINS
UNITED STATES ATTORNEY

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By: *Donald H. Caldwell, Jr.*
Donald H. Caldwell, Jr.
Assistant United States Attorney
NC Bar No. 15489
Attorney for the United States of America
227 West Trade Street, Rm 1650
Charlotte, NC 28202
Tel: (704) 344-6222
Fax: (704) 227-0248
Email: Donald.H.Caldwell@usdoj.gov

JOYCE R. BRANDA
RENEE BROOKER
WILLIAM C. EDGAR

ATTORNEYS FOR THE
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE AND NO SERVICE

I hereby certify that on the 3rd day of May, 2012, a true and correct copy of the foregoing Notice of Intervention in Part for the Purpose of Partial Settlement, Stipulation of Partial Dismissal of Claims was served upon the parties below by mailing a copy thereof, postage prepaid and properly addressed as indicated. The Memorandum in Support of Stipulation and Order has not been served upon the parties noted below because that pleading refers to details of the Government's investigation of this case.

Richard A. Hartpootlian
Richard A. Hartpootlian, P.A.
1410 Laurel Street
Columbia, SC 29202

Preston O. Odom, III
William K. Diehl, Jr.
JAMES, MCELROY & DIEHL, P.A.
600 South College Street
Charlotte, NC 28202

Reuben Guttman
GRANT & EISENHOFER, P.A.
1920 L Street, N.W., Suite 400
Washington, DC 20036

James J. Sabella
Lydia Ferrarèse
GRANT & EISENHOFER, P.A.
485 Lexington Ave.
New York, NY 10017



DONALD H. CALDWELL, JR.
ASSISTANT UNITED STATES ATTORNEY