

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA, the)
States of CALIFORNIA, DELAWARE,)
FLORIDA, HAWAII, ILLINOIS,)
INDIANA, MASSACHUSETTS,)
MINNESOTA, MONTANA, NEVADA,)
NEW HAMPSHIRE, NEW JERSEY,)
NEW MEXICO, NEW YORK,)
NORTH CAROLINA, OKLAHOMA,)
RHODE ISLAND, VIRGINIA,)
the DISTRICT OF COLUMBIA,)
the CITY of CHICAGO, and)
the CITY of NEW YORK,)
Plaintiffs,)

ex rel. LYNN E. SZYMONIAK,)

v.)

ACE SECURITIES CORPORATION)
ALLY FINANCIAL INC. f/k/a GMAC INC.)
AURORA LOAN SERVICES LLC)
BANK OF AMERICA as successor-in-interest)
to COUNTRYWIDE FINANCIAL)
CORPORATION)
BAC HOME LOANS SERVICING, LLP)
BANC OF AMERICA MORTGAGE)
SECURITIES, INC.)
BAYVIEW LOAN SERVICING LLC)
CALIFORNIA RECONVEYANCE COMPANY)
CARRINGTON MORTGAGE SERVICES)
CHASE HOME FINANCE)
CITIMORTGAGE INC f/k/a CITI)
RESIDENTIAL LENDING, INC. f/k/a AMC)
MORTGAGE SERVICES INC.,)
DOCX, LLC;)
HOME Q SERVICING CORPORATION d/b/a)
BARCLAYS CAPITAL REAL ESTATE, INC.)
HSBC MORTGAGE SERVICES INC.)
LENDER PROCESSING SERVICES, INC.;)
LITTON LOAN SERVICING)

FILED
CHARLOTTE, NC
DEC 3 2012
U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

CIVIL NO. 3:10CV575-RJC
UNDER SEAL

NATIONWIDE TITLE CLEARING)
 OCWEN LOAN SERVICING)
 ONEWEST BANK)
 ORION FINANCIAL GROUP)
 PROMMIS SOLUTIONS)
 SECURITIES CONNECTION, INC.)
 SELECT PORTFOLIO SERVICES, INC.)
 VERICREST FINANCIAL INC.)
 WELLS FARGO HOME MORTGAGE d/b/a)
 AMERICA'S SERVICING COMPANY)
 JOHN DOES CORPORATIONS 1)
 THROUGH 100)
 All whose true names are unknown)
)
)
 Defendants.)

**MEMORANDUM IN SUPPORT OF
 MOTION FOR A THIRTY (30) DAY EXTENSION OF TIME WITHIN WHICH
TO INTERVENE AND MAINTAIN SEAL OVER SECOND AMENDED COMPLAINT**

The United States of America, along with the States of California, Florida, Illinois, Massachusetts, Minnesota, Montana, Nevada, New Mexico, North Carolina, and the District of Columbia, the City of Chicago and the City of New York (the "Plaintiffs"), by and through undersigned counsel, move for an extension of time within which to notify the Court regarding its intervention decision, and asks that the seal in this matter be maintained, through and including January 3, 2013. The United States has attempted to contact the States of Hawaii, New Hampshire and Rhode Island, but as of the time of this filing, has not received a response. As grounds for this motion, the undersigned requests additional time to obtain Department of Justice approvals to notify the Court at the next deadline of how the United States will proceed. In support of its motion, the Plaintiffs state as follows:

1. This case was filed on November 12, 2010, by Lynn E. Szymoniak. Ms. Szymoniak filed the case under the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.* and alleges, *inter alia*,

that the Defendants knowingly, unlawfully and wrongfully submitted false claims and statements to officials of the Plaintiff governments, for the purpose of obtaining payment in violation of various federal, state and local regulations.

2. This matter is a *qui tam*, or whistleblower case, and Ms. Szymoniak, having brought the matter to the attention of the government, is the known relator.

3. The First Amended Complaint was filed February 3, 2011.

4. The United States Attorney for the Western District of North Carolina was served with the First Amended Complaint on or about February 3, 2011.

5. The First Amended Complaint, filed by the relator, added 18 states, the District of Columbia, and two cities as parties plaintiff. Each of these entities has its own False Claims Act by which it can recover damages. Their claims are pendent claims in this action.

6. A Second Amended Complaint was served on June 30, 2011, and the current extension expires December 4, 2012.

7. 31 U.S.C. Section 3730(b) provides for the *qui tam* complaint to remain under seal for sixty (60) days from service of the complaint and relator's material evidence on the United States. The purpose of the 60-day sealing period is to permit the government to investigate the allegations contained in the complaint.

8. *Qui tam* actions are unique in that once the complaint is filed and the United States is served, the United States begins the investigation of the fraud allegations, which are sometimes extensive and complex. The United States then determines whether or not it will intervene in the case.

9. The federal False Claims Act provides that "[t]he Government may, for good cause shown, move the court for extensions of time during which the complaint remains under seal under paragraph (2)." 31 U.S.C. §3730(b)(3). Good cause is shown when, due to the complexity of the

allegations, additional time is needed to properly investigate the allegations and arrive at a reasoned decision regarding intervention.

10. This is the United States' fifth motion to extend the intervention deadline and seal. The United States is seeking an identical extension in the related case in the District of South Carolina.

11. Courts in the Western District of North Carolina have freely granted extensions of time in past *qui tam* actions in order to allow the government to complete its investigation of the facts at issue. *See U.S. ex rel. Laura Clawson v. Healthmate, et al.*, Civil Action No. 5:01CV168-V (2002 W.D.N.C.) (unsealed).

12. The United States is cognizant of the Court's concern that the government pursue its investigations of *qui tam* matters under seal expeditiously and with diligence, and that the government make a timely decision concerning intervention so the case may move forward. The United States submits, however, that an additional extension is warranted in this case to allow the United States to complete its deliberative process and to obtain Department of Justice approvals for how the United States will proceed.

13. The United States requires an additional, brief extension of the time in which to allow its deliberative process to be completed, to coordinate with relator and the states regarding the United States' position, and to allow the United States to notify the Court at the next deadline of how the United States will proceed. It is estimated that these additional deliberations and procedures will require a relatively brief period of approximately thirty (30) days.

WHEREFORE, the United States of America moves for a thirty (30) day extension of the deadline in this case, through and including January 3, 2013, and requests that the Court maintain the seal on the Second Amended Complaint through and including January 3, 2013.

Respectfully submitted this 3rd day of December, 2012,

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CERTIFICATE OF SERVICE AND NO SERVICE

I hereby certify that on the 3rd day of December, 2012, a true and correct copy of the foregoing Motion For a Thirty (30) Day Extension of Time Within Which to Intervene and Maintain Seal Over Second Amended Complaint was served upon the parties below by mailing a copy thereof, postage prepaid and properly addressed as indicated. The Memorandum in Support of that Motion and proposed Order has not been served upon the parties noted below because that pleading refers to details of the Government's investigation of this case.

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