



SO ORDERED,

Judge Edward Ellington
United States Bankruptcy Judge
Date Signed: June 3, 2014

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

COMMUNITY HOME FINANCIAL
SERVICES, INC.,

CASE NO. 12-01703-EE

DEBTOR.

CHAPTER 11

**AGREED ORDER GRANTING TRUSTEE'S APPLICATION TO EMPLOY
LOAN SERVICING COMPANY AND TO ESTABLISH SETTLEMENT
AUTHORITY [DKT. #618]**

There came on for the Court's consideration the Trustee's Application To Employ Loan Servicing Company And To Establish Settlement Authority ("Application") [Dkt. #618] filed by Kristina M. Johnson, Trustee ("Trustee") of the Estate of Community Home Financial Services, Inc. ("Debtor"), and the Edwards Family Partnership, LP and Beher Holdings Trust's Objection To Trustee's Motion To Employee Loan Servicing Company and to Establish Settlement Authority [Dk #630] filed by Edwards Family Partnership, L.P. ("EFP") and Beher Holdings Trust ("BHT") in the above-styled Chapter 11 proceeding. The Court, being fully advised in the premises, and having considered the testimony of the Trustee and Alan Sercy of Vantium Capital, Inc., as well as the arguments presented, at the hearing on the Motion, finds as follows:

I. Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 327, Fed. R. Bankr. Proc. 2014 and 9019, and the order granting automatic reference to this Court. This is a core proceeding.

II. Procedural History

2. On May 23, 2012, (the "**Petition Date**"), the Debtor filed a voluntary petition for relief in this Court under Chapter 11 of the Bankruptcy Code.

3. On December 20, 2013, a Disclosure of Transfer of Funds and other Matters ("**Disclosure**") [Dkt #426] was filed in the Chapter 11 case indicating that: (1) the Debtor changed its principal place of business to Panama; (2) the Debtor had transferred funds from its debtor-in-possession account(s) to the Debtor's bank accounts in Panama;¹ and (3) the Debtor continues to service its business operations in Panama and Costa Rica.

4. In response to the Disclosure, the United States Trustee filed an Emergency Motion for Order for the Appointment of a Chapter 11 Trustee. On December 23, 2013, the Court entered an Order Granting the United States Trustee's Emergency Motion for Order for the Appointment of a Chapter 11 Trustee [Dkt. #429] directing the appointment of a trustee in this case.

5. On January 8, 2014, the United States Trustee's Office filed its Application For Approval of Chapter 11 Trustee [Dkt. #455]. On January 16, 2014, the Court approved the United States Trustee's appointment of the Trustee pursuant to a bench ruling that was confirmed in an Order dated January 21, 2014 [Dkt. #473].

¹ Since that Disclosure, it has been asserted in filed pleadings that the funds transferred from the Debtor's debtor-in-possession accounts were moved to accounts titled in the name of non-debtor entities.

6. The Trustee is now the duly acting and qualified trustee in this case.

III. Nature of the Debtor's Operations

7. According to the Debtor's Disclosure Statement [Dkt. #167, p. 9] "CHFS is in the business of purchasing and servicing loan portfolios consisting of mostly Class B loans of 2nd to 3rd mortgages." The Disclosure Statement at page 20 valued the loan portfolio at \$39,177,486.27.

8. During the course of this Chapter 11 case, the Debtor has generated substantial sums of money from these loans. For example, the Debtor showed cash receipts of \$2,223,875.06 in October, 2013. *See* Monthly Operating Report, Dkt.# 416, p. 8. The value in these loans primarily lies in the servicing of the loans, including receipt of payments, accurate crediting of payments and borrower relations.

IV. Trustee's Initial Investigation and Efforts at Stabilization

A. Initial Investigation

9. Consistent with her statutory duties, the Trustee has sought expeditiously to proceed with her statutory investigatory duties. Those efforts include (but are not limited to) interviewing counsel for the parties, obtaining possession of the Debtor's debtor-in-possession accounts, taking control of the Debtor's web site, demanding turnover of the Debtor's books and records² and interviewing creditors and borrowers of the Debtor.

10. The Trustee's initial investigation indicates that the Debtor may have had inadequate staff to provide the "high touch" service required to properly service loans of this

² While some information has been provided to the Trustee, much of the relevant information demanded by the Trustee has not been provided. Critically, the Trustee has not been provided with some original loan assignments that may be needed for the Trustee to cancel mortgages upon payment in full.

kind.³ Furthermore, the Trustee has received notices from some state agencies alleging that the Debtor's servicing license has expired or will shortly expire. Some borrowers have alleged that the Debtor was not properly licensed to service loans in their state. The Trustee has also been advised by many borrowers that they did not receive 1098 mortgage statements for the year 2013 required to be sent under federal law and, in many instances, did not receive monthly statements. Other borrowers have alleged improper credit reporting. The Trustee has received copies of numerous Better Business Bureau complaints against the Debtor from borrowers for actions allegedly taken by Debtor prior to her appointment.

11. As further set forth below, the Trustee has also gleaned information from borrowers of the Debtor that has yielded information as to ongoing efforts of former management and employees of the Debtor to de-stabilize the Estate and to siphon additional money from the Estate.

12. While the Trustee's investigation is not yet complete, and some of the information reported to the Trustee has not yet been independently confirmed, the Trustee contends that it appears at a minimum the Debtor was having difficulty properly servicing loans prior to the Court's order directing the appointment of a trustee.

B. Challenges to Stabilization

13. On January 31, 2014, the Trustee intercepted at the Debtor's 234 East Capitol Street location a customer/borrower of the Debtor who was making her customary cash payment on her loan to an individual at the 234 East Capitol Street location (this individual, when questioned, claimed she worked for Discount Mortgage, Inc. – an entity related to the Debtor). This naturally raised alarm that the former officers, employees and/or principals of the Debtor

³ The Trustee may not have all of the Debtor's computer records and, therefore, has not yet reached any conclusions on these issues.

(together, "**Former CHFS Representatives**"), as well as its affiliates and/or insiders were engaging in a full-court press to re-direct payments away from the Estate.⁴ These concerns were elevated when the Trustee learned that just prior to the filing of the Disclosure, employees of the Debtor filed notices in at least 5 Chapter 13 cases requesting that Chapter 13 payments owed to the Debtor be sent to a Las Vegas, Nevada, post office box controlled by the Debtor post-petition but not previously disclosed to this Court. Furthermore, the Trustee learned the week of February 10, 2014, that the Former CHFS Representatives apparently continued to accept payments on-line for a period time. Since that time, the Trustee has learned that the Former CHFS Representatives have continued through various means to divert funds away from the bankruptcy Estate, even after the Trustee was appointed. For example, the Former CHFS Representatives established a call center that sent out collection letters, payoff statements, monthly statements, and communicated with borrowers by telephone, despite having no authority to do so, and directed borrowers to remit payments to a post office box in Miami, Florida, in violation of the Court's order approving the appointment of the Trustee. While the Trustee's investigation is not yet complete, the Trustee estimates that in excess of \$8 million has been diverted from the bankruptcy Estate since approximately November of 2013 to the present. Nevertheless, based on the Debtor's schedules, significant value exists in the remaining payment stream under the Debtor's loan portfolio.

14. In some instances, the Trustee has been advised that the Former CHFS Representatives denied that the Debtor was in bankruptcy, with the result that some borrowers questioned the Trustee's authority to receive payments.

⁴ On March 10, 2014, a criminal complaint was filed against William D. Dickson, who has since been detained in federal custody. An indictment was issued on April 9, 2014, Criminal No. 3:14-cr-00078-TSL-FKB, United States District Court for the Southern District of Mississippi.

15. The conduct of the Former CHFS Representatives has resulted in a borrower-base that ranges from angry to confused, to the detriment of both borrowers and the Estate.

16. Furthermore, the Trustee has received numerous e-mails and phone calls from borrowers requesting payoff information and short sale requests. However, the Trustee's ability to respond to such requests has been hindered since some of the Debtor's books and records have not been provided to her despite her demand for same. Also, many borrowers have asked to be able to make payments on-line or via automatic draft; however, the Trustee has no present ability to accept on-line or automatic draft payments.

C. Initial Stabilization

17. Due to the unusual circumstances of this case, the Trustee as an interim crisis management measure has engaged in basic servicing of the loans with the assistance of counsel.⁵ Shortly after her appointment, and as part of her initial investigation, the Trustee sent notification letters to as many borrowers as could be located given the incomplete information at her disposal, advising them of her appointment and the address to which future payments should be sent. Furthermore, many borrowers began contacting the Trustee through the Debtor's web site. As a result of these efforts, some borrowers have begun sending their monthly payments to the Trustee and some borrowers have paid off their loans in full. Nevertheless, a substantial number of borrowers either have not yet been contacted due to lack of contact information or have not complied with the Trustee's request and/or instructions.⁶

⁵ As part of this interim servicing, the Trustee filed a Motion For Interim Authority *Nunc Pro Tunc* To January 8, 2014, To Service Loans In The Ordinary Course Of Business [Dkt. # 553]. An Order was entered on that Motion on April 11, 2014. See Dkt. #616.

⁶ For example, the Trustee recently discovered that an entire set of loans exists for which the Trustee has no historical borrower data.

18. Since her appointment, the Trustee and her counsel have fielded hundreds of e-mails, faxes and telephone calls from borrowers in an attempt to reduce the confusion created by the actions of the Former CHFS Representatives and to stabilize the Estate. While this exercise was highly beneficial to the Estate and the Trustee's investigation – yielding much of the information as to how the Former CHFS Representatives continued diverting funds from the Estate – the costs of the Trustee and her counsel servicing the loans are substantial. Additionally, the Trustee and her counsel desire to focus on other important matters that need to be addressed.⁷

19. Additionally, the Trustee and her staff are not equipped to handle the volume of phone calls and correspondence needed to effectively service consumer loans. Moreover, without all of the Debtor's books and records, it will be difficult and expensive for the Trustee to reconstruct as needed the Debtor's records, provide payoff and other information to the Debtor's borrowers, and otherwise service the loans for the benefit of the Estate. Without active and effective servicing, many borrowers may simply stop making payments and the value of the Estate assets will decrease substantially, to the detriment of the Debtor's creditors. And, mortgage servicing is a highly specialized industry subject to state and federal law, such as RESPA and related regulations and the Fair Debt Collection Practices Act and related regulations. Importantly, the Consumer Financial Protection Board enacted new regulations effective January 10, 2014.⁸

⁷ To the extent practical, the Trustee has utilized non-billing entities to reduce costs.

⁸ While the Trustee's investigation is not yet complete, she contends preliminarily that it appears the Debtor's servicing practices would not have been compliant under the new regulations, such as the requirement to provide prompt payoff, adjustment notices and monthly statements, if the Debtor is covered by these regulations.

20. In short, while the Trustee has done much to stabilize the Estate, more work needs to be done to stabilize the value of the mortgage portfolio – work that will be handled more efficiently going forward by a professional mortgage servicing company that is fully compliant with current regulations.

21. The Trustee, in her business judgment, has determined that it would be in the best interests of the Estate for a professional servicing company to handle servicing on a going-forward basis, subject to the Trustee’s supervision and control.

V. Trustee’s Selection Process

22. The Trustee initially sought recommendations for mortgage servicers from attorneys experienced in the residential mortgage industry. From there, the Trustee made contact with servicers who were recommended to her. While several capable companies exist who could service the Debtor’s loans, the Trustee determined to retain Vantium Capital, Inc., a Delaware Corporation doing business as Acqura Loan Services (“Servicer”),⁹ subject to Court approval, following: (a) review of Servicer’s due diligence package and recommendations and/or references; (b) several conference calls with Servicer and exchanges of numerous revised terms sheets; (c) an in-person meeting with Servicer representatives and representatives of EFP/BHT, who have asserted the largest claims in the case; and (d) the fact that Servicer (unlike the Debtor) is licensed in all 50 states both as a servicer and debt collector. For the reasons set forth herein, the Trustee believes that Servicer is the ideal company to take over a largely de-stabilized portfolio and stabilize it effectively.

⁹ The Servicer is in the process of changing its name. Once that has been accomplished, the Trustee will file a Notice of Change of Servicer Name with this Court.

VI. Retention of Servicer

23. Section 327(a) of the Code provides that “the trustee, with the court’s approval, may employ ... other professional persons, that do not hold or represent an interest adverse to the Estate, and that are disinterested persons, to ... assist the trustee in carrying out the trustee’s duties under this title.”

24. The Trustee seeks authority to retain Servicer to assist the Trustee in servicing the Debtor’s mortgage portfolio substantially according to the terms and conditions of the Residential Mortgage Special Servicing Agreement (“Servicing Agreement”) between the Trustee and the Servicer attached hereto as Exhibit “1” (without supporting schedules due to volume). While the terms and conditions of the Servicing Agreement control, certain provisions are highlighted as follows:

- Certain entities will be required to release documents to the Servicer upon request as needed in order for it to effectively carry out its duties (Servicing Agreement, Section 2.2);
- Servicer will be compensated out of amounts it collects for the Trustee and will deduct its monthly fees and expenses before remitting the monthly balance to the Trustee (Servicing Agreement, Section 2.5);
- Trustee is granting Servicer a limited indemnity by the Estate subject to various conditions (Servicing Agreement, Sections 8.3). EFP/BHT are granting Servicer a separate and independent indemnity attached hereto as Exhibit “2” (Servicing Agreement, Section 8.4) to which the Trustee is not a party;
- Servicer expressly disclaims and does not assume liability arising from, among other things, third party claims or actions that were caused by or

resulted from any actions or omissions in respect of any loans or real estate owned (“**REO**”) property by the Debtor, any prior servicer, sub-servicer, owner or originator of a loan or REO property and relating to the failure or refusal of Trustee or any trustee or custodian in possession of original loan documents to timely provide to Servicer the originals of any loan documents in order to allow Servicer sufficient time to timely process satisfactions, payoffs and releases. Trustee has agreed to seek injunctive relief against any person or entity seeking to hold Servicer liable for the liability disclaimed by Servicer. (Servicing Agreement, Section 8.5).

25. As evidenced by Exhibit “2” to the Application and the testimony provided by Mr. Sercy, Servicer is experienced in the mortgage loan servicing industry (particularly subordinate mortgages of the kind that predominantly comprise the Debtor’s portfolio) and is well qualified to provide assistance to the Trustee. Servicer is licensed in all 50 states, not only as a loan servicer, but also as a debt collector, such that Servicer is a “soup to nuts” entity that can assist the Trustee in all steps needed to liquidate the assets of the Estate.

26. The Trustee believes that the Servicer will maximize the value of the Estate and stabilize borrower concerns regarding their loans. Servicer’s duties will include, but not necessarily be limited to: (a) collecting payments and depositing those payments (net of Servicer’s fees) into United States Trustee-approved accounts and remitting net amounts to the Trustee on a monthly basis; (b) providing reports of payments received; and (c) interacting with borrowers. Additionally, the Debtor scheduled several pieces of foreclosed real property as Estate property. At the Trustee’s request, Servicer will manage and make recommendations to

the Trustee for the disposition of such REO property. Servicer will not retain outside counsel on Trustee's behalf, nor will it sell REO property unless approved by this Court.

27. In order to enable Servicer to maximize efficiencies, the Trustee will execute a Limited Power of Attorney in substantially the form attached to the Application as Exhibit "3."

28. The Trustee proposes to compensate Servicer according the following scheduled that is also reflected in Exhibit C of the Servicing Agreement:

- Electronic Boarding: \$25, (includes dormant loans).

- Deboarding/Transfer: \$25, except no de-board fee if Vantium terminates or if upon negligence or breach of contract by the Trustee or for Loans Charged Off with No Further Action. The de-board fee for Loans Charged Off with Further Action shall be \$12.50 per Loan.

- Interim Accounting Work (for uploading servicing notes and payments calculations for period from Trustee's appointment to transfer of Loans to Servicer)(separate from Electronic Boarding Fee): \$35 per loan, one-time fee.

- Administrative Fee: If a borrower documents payments that were not recorded, Vantium will receive a one-time payment of \$40 per loan for the additional work required to follow up with borrower, update system of record and send confirmation to borrower. Vantium may use its reasonable business judgment in determining what constitutes proper documentation of payments.

- Performing Loans:
 - Base Fees - 10% of payments collected, up to \$50 per loan with a floor of \$20 per loan, 50% of late fees.
 - Additional Fees - Bankruptcy and Foreclosure loans - onetime payment of \$100 in addition to the Base Fee.

- Dormant Loans:
 - Base Fees - \$7.50 per loan, per month.
 - Additional Fees - Bankruptcy – onetime payment of \$100 in addition to the Base Fee.
 - Activation Bonus - For each loan that had not paid within 3 months of the last CHFS report to EFP/BHT and those that cannot document payment since September 2013, Vantium will receive an activation bonus of the lesser of \$300 or 1.5% of principal balance for those it receives at least 3 P&I payments, in addition to the monthly Base Fee.

29. The Trustee recognizes that there is a significant front-end cost associated with retaining the Servicer due to the largely destabilized condition of the Debtor's mortgage portfolio and the uncertain condition of certain information the Trustee currently possesses (due to the refusal of the Former CHFS Representatives to surrender the Debtor's books and records). However, this case presents an unusual and difficult set of facts as the Trustee is not able to hand over to a servicer a largely stabilized portfolio. Higher front-end costs under the unusual circumstances of this case are essential to preserve borrower relationships (especially in light of the confusion caused by the Former CHFS Representatives) and preserve the long-term value to the Estate. Importantly, the cost of Trustee and her counsel continuing to service the loans is significantly higher than what has been proposed by Servicer and comes without the added borrower confidence that the Servicer can provide. Servicer expects that it will take approximately six (6) months to stabilize the portfolio.

30. The foregoing notwithstanding, as reflected in the Affidavit of Alan Sercy ("Affidavit") attached to the Application as Exhibit "4," Servicer is aware of the provisions of 11 U.S.C. § 328(a) and has agreed, notwithstanding the terms and conditions of employment herein set forth, that the Court may allow compensation different from the compensation provided herein if such terms and conditions prove to have been improvident in light of developments anticipatable at the time of the fixing of such terms and conditions.

31. As reflected in the Affidavit, Servicer is a disinterested person within the meaning of 11 U.S.C. § 101.

32. The Trustee proposes that she will send a letter to borrowers enclosing a copy of the Order approving this Application, along with an introductory letter from Servicer, in order to

smooth the transition and satisfy borrower concerns that the Servicer has indeed been employed by the Trustee with the approval of this Court.

VII. Role of EFP and BHT and Protections Granted to Them

33. EFP and BHT have asserted various interests in the Debtor's portfolio that are the subject of adversary proceedings pending before this Court. For clarity, nothing herein affects the rights, claims or defenses of EFP/BHT (including, but not limited, alleged rights of offset or to seek administrative expenses claims) or those of the Trustee with respect to those adversary proceedings, any others that may be filed or any present or future contested matters and/or administrative expense claims.

34. EFP and BHT were granted certain protections by the Court prior to the Trustee's appointment and obtained reporting data from the Debtor up through October of 2013. Additionally, the Servicing Agreement places a duty on the Trustee to supply Servicer with Loan Files. EFP and BHT are in possession of certain original notes and other documents that may be needed by the Servicer in order to service payoffs and otherwise service the loans, and they will supply originals or copies to Servicer upon request as necessary to permit servicing of the loans for payoffs, short sales, subordinations, or otherwise. Moreover, EFP and BHT may be called upon to consent to the release of certain original documents in the possession of a third-party custodian. By their counsel executing this Order, EFP and BHT have agreed to voluntarily cooperate with the Servicer in order to smooth the transition, reduce costs and otherwise further servicing by supplying to Servicer upon request as needed additional data, surrendering original loan documents, consenting to the release of documents from third-parties, and otherwise providing information that may assist Servicer, all of which are solely intended to maintain and/or enhance the loan portfolio. In exchange, EFP and BHT will be given "view only" access to Servicer's proprietary web-based software in order to track servicing activities subject to EFP

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and BHT executing confidentiality/non-disclosure agreements with Servicer. The Trustee will also provide EFP and BHT with monthly reports of collections she receives from Servicer.

35. For clarity, the Trustee has agreed that the release by EFP and BHT of original documents or their consent to the release of original documents by a third-party custodian: (a) shall not impair, waive or otherwise affect any interest they may assert in such loans or the proceeds thereof or the Trustee's rights, claims and defenses as to same; and (b) to the extent EFP and BHT are later adjudicated to have a valid interest in any loans, that interest shall attach to the proceeds in the Trustee's debtor-in-possession accounts in the same order and with the same priority that would have existed but for the Debtor's Chapter 11 filing,¹⁰ subject to the surcharge provisions set forth below.

36. The Servicer will preserve and benefit any interest EFP and BHT may ultimately be determined to have in the loans and, as a result, the Servicer's fees and expenses should be subject a Section 506(c) surcharge that is not subject to "claw back" by creditors for any cause other than violation of the terms of the Servicing Agreement.

VIII. Settlements With Borrowers

37. While the Trustee contends she has authority to settle, adjust and otherwise resolve borrower issues in the ordinary course of business, the Trustee out of an abundance of caution seeks approval for herself and the Servicer of a protocol for settling, adjusting or otherwise modifying loans.¹¹

¹⁰ These issues and others are currently the subject of multiple adversary proceedings that were pending at the time of Trustee's appointment but which have been stayed pending the Trustee's stabilization of the Estate.

¹¹ In the Application, the Trustee proposed a Baseline. However, EFP/BHT objected to the Baseline and as a result of the agreement reached by which the Objection is being withdrawn, that approach is not approved herein.

A. Class Settlements

38. Attached hereto as Exhibit “3” is a Settlement Matrix that provides various scenarios under which Servicer can take action on behalf of the Trustee in Servicer’s best business judgment, while in other scenarios Servicer must obtain the Trustee’s consent. This approach will enable the Servicer to efficiently and quickly resolve garden variety borrower issues without having to seek the Trustee’s input on routine matters and without the Trustee having to continually seek Court approval to the extent required. This approach will also enable more complex matters to be settled in the Trustee’s discretion without having to repeatedly seek Court approval to the extent required.

B. Settlement Standards

39. In summary, the Trustee seeks authority to settle a class of claims (namely, assorted borrower claims as described above) under Fed. R. Bankr. Proc. 9019(b), which provides, “After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise and settle controversies within such class or classes and without further hearing or notice.” The Trustee’s proposal under Fed. R. Bankr. Proc. 9019(b) complies with the Fifth Circuit standards for approving compromises and settlements under Fed. R. Bankr. Proc. 9019(a).

40. A basic policy in bankruptcy cases is that compromise is favored. Lawrence P. King, *Collier on Bankruptcy*, ¶ 9019.01. Courts have built on this policy by adopting the standards set forth in the U. S. Supreme Court decision, *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). In *TMT*, the Supreme Court held that a compromise would be approved by a bankruptcy court only “after it apprise[s] itself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated

estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties in collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.” *Id.* at 424.

41. “Settlement agreements have always been a favored means of resolving disputes’ in the Fifth Circuit.” *Hyperion Foundation, Inc. v. Academy Health Ctr., Inc.*, 2009 WL 3633878 at 3 (Bankr. S.D. Miss. Oct. 27, 2009). The Fifth Circuit standard for the approval of settlements has been stated in *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc.*:

a. [t]he probability of success in the litigation, with due consideration for the uncertainty in fact and law,

b. [t]he complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and

c. [a]ll other factors bearing on the wisdom of the compromise. 119 F.3d 349, 356 (5th Cir. 1997).

42. These factors have been summarized as requiring the compromise to be "fair and equitable" and "in the best interests of the Estate." *TMT*, 390 U.S. at 424; *Cajun Elec.*, 119 F.3d at 355.

43. The proposal to approve compromises and settlements meets the Rule 9019(a) standards and, in fact, is generally consistent with the relief the Court approved on April 9, 2014, in the Order Granting Trustee’s Motion To Approve Procedure For Compromise And Settlement Of A Class Of Claims, As Amended, On An Interim Basis [Dkt. #615]. The proposal is fair and equitable and is in the best interest of the Estate and affected borrowers. It avoids claim litigation as to the amounts owed by many borrowers, saves the Estate the significant

administrative expense associated with unnecessary claims litigation or filing separate motions to approve compromise and settlement for what could possibly be hundreds or thousands of settlements, enables the Estate to meet its obligations to borrowers under applicable regulations and to immediately maximize reasonable value for many loan assets. The proposal is also in the interest of judicial economy as the Court will not be burdened with numerous, separate motions to approve compromise and settlement to the extent required.

44. The Trustee requests that the Court waive the 30-day requirements of RESPA with regard to the transfer of loans to the Servicer for servicing, and that request is well taken.

45. EFP/BHT have agreed to withdraw their Objection based on the terms and conditions set forth herein. A professional servicing company is needed to enable the Trustee to administer the Estate. Therefore, the Application is well taken and should be granted.

IT IS, THEREFORE, ORDERED that the Objection is withdrawn, the Application is granted and the Trustee is authorized to retain the Servicer on the terms and conditions herein and in the Servicing Agreement.

IT IS FURTHER ORDERED that Servicer expressly disclaims and does not assume liability arising from, among other things, third party claims or actions that were caused by or resulted from any actions or omissions in respect of any loans or REO property by the Debtor, any prior servicer, sub-servicer, owner or originator of a loan or REO property and relating to the failure or refusal of Trustee or any trustee or custodian in possession of original loan documents to timely provide to Servicer the originals of any loan documents in order to allow Servicer sufficient time to timely process satisfactions, payoffs and releases.

IT IS FURTHER ORDERED that the 30-day requirements of RESPA with regard to the transfer of loans to the Servicer are hereby waived.

IT IS FURTHER ORDERED that the Trustee will send a letter to borrowers enclosing a copy of this Order, along with an introductory letter from Servicer, in order to smooth the transition and satisfy borrower concerns that the Servicer has indeed been employed by the Trustee with the approval of this Court.

IT IS FURTHER ORDERED that EFP and BHT shall upon request cooperate with the Servicer in supplying additional data, surrendering original loan documents, consenting to the release of documents from third-parties, and otherwise providing information that may assist Servicer. Servicer shall provide EFP and BHT the “view only” access set forth in the Application subject to their execution of confidentiality agreements with Servicer.

IT IS FURTHER ORDERED that the release by EFP and BHT of original documents or their consent to the release of original documents by a third-party custodian: (a) shall not impair, waive or otherwise affect any interest they may assert in such loans or the proceeds thereof or the Trustee’s rights, claims and defenses as to same; and (b) to the extent EFP and BHT are later adjudicated to have a valid interest in any loans, that interest shall attach to the proceeds in the Trustee’s debtor-in-possession accounts in the same order and with the same priority that would have existed but for the Debtor’s Chapter 11 filing, subject to the surcharge provisions set forth below. Nothing herein affects the rights, claims or defenses of EFP/BHT (including, but not limited to, any alleged rights of offset or to seek administrative expenses claims that EFP and BHT have advised the Trustee they plan to seek for the difference between the contractual agreements with the Debtor and the charges of Vantium approved herein) or those of the Trustee with respect to those adversary proceedings, any others that may be filed or any present or future contested matters and/or administrative expense claims, nor shall this Order constitute a finding as to any issues raised in such proceedings.

IT IS FURTHER ORDERED that the Servicer's fees and expenses are subject to a Section 506(c) surcharge that is not subject to "claw back" by creditors for any cause other than violation of the terms of the Servicing Agreement.

IT IS FURTHER ORDERED that entities required to surrender documents to the Servicer under the Servicing Agreement in order for it to effectively carry out its duties are directed to do so.

IT IS FURTHER ORDERED that the settlement authority requested by the Trustee in Part VIII above is hereby approved, and the Trustee is authorized to execute all documents and instruments necessary thereto including, but not limited to, lost instrument affidavits. State and local agencies are authorized to accept this Order for recording in land records and other record repositories.

IT IS FURTHER ORDERED that nothing herein waives or otherwise impairs any claims, defenses and/or rights the Trustee or creditors (including EFP and BHT) may have against the Debtor, its employees, officers, directors, insiders, agents, affiliates, or control persons (including, specifically, the Former CHFS Representatives), and all such rights, claims and defenses against the Debtor, its employees, officers, directors, affiliates, insiders, agents and/or control persons (including specifically the Former CHFS Representatives) are hereby expressly preserved.

****END OF ORDER****

Submitted by:

s/Jeffrey R. Barber

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Agreed to and Approved as to Form:

s/Jim F. Spencer

Counsel for EFP/BHT