No. 10-1285

IN THE

Supreme Court of the United States

COUNTYWIDE HOME LOANS, INC.,

Petitioner,

v.

FRANCISCO & ANNA RODRIGUEZ,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioner has presented compelling reasons to grant the Petition where the Third Circuit's Opinion is fully consistent with the decision of the Fifth Circuit Court of Appeals and does not conflict with a decision of this Court nor any other precedential decision.

2. Whether Petitioner has presented compelling reasons to grant the Petition where the Third Circuit's Opinion fully comports with all established definitions of a "claim" in bankruptcy and Petitioner's singular interpretation of Administrative Reg. X under 24 C.F.R. § 3500.17 would negate the effect of the bankruptcy automatic stay (11 U.S.C. § 362(a)), which is the most basic protection afforded bankruptcy debtors under the Bankruptcy Code.

3. Whether Petitioner has presented compelling reasons to grant the Petition where acceptance of the Petitioner's proposed interpretation of Administrative Reg. X under 24 C.F.R. § 3500.17 would further result in negating the effect of 11 U.S.C. § 1322(b)(5) which afford the right of bankruptcy debtors to cure "*any*" pre-petition default under the provisions of a chapter 13 bankruptcy plan.

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INTRODUCTION AND STATEMENT OF THE CASE

Petitioner has demonstrated no "compelling reason" for its Petition for a Writ of Certiorari to be granted as required by Supreme Court Rules. Not only does there exist no conflict or split of authority between the circuits on this issue, there is virtually no authority whatsoever to support the singularly unique interpretation set forth by the Petitioner. Acceptance of Petitioner's analysis would elevate a questionable reading of an Administrative Regulation over the clear and unequivocal provisions of the United States Code and in the process negate the most central protections afforded to bankruptcy debtors in the United States.

Debtors (Respondents Francisco and Anna Rodriguez) filed for chapter 13 Bankruptcy protection in October 2007 having fallen behind on their mortgage payments, being in arrears in the amount of $ 20,844.40, or eight monthly payments of $ 2,605.55. Under the terms of the mortgage contract with Countrywide, Debtors were obligated to pay principal and interest of $ 1,898.35 per month plus escrow of $ 707.20 per month. Debtors proposed a Chapter 13 plan to cure the entire pre-petition arrears through their Chapter 13 plan as permitted under 11 U.S.C. § 1322(b)(5), thereby returning their mortgage account to current status. That mortgage cure would repay not only the principal and interest but also the entire escrow balance which included the projected escrow *surplus* (or "cushion" as permitted by RESPA). As of the date of the Debtors' bankruptcy filing, there existed no actual escrow shortage, only the pre-petition arrears which were to be repaid through the chapter 13 plan. Countrywide's

bifurcation of the pre-petition arrears and replacement of the projected escrow balance with a substituted zero balance diverted the monies from the debtors chapter 13 plan. It accelerated the collection of a large portion of the pre-petition escrow arrears (from sixty (60) months or less through a chapter 13 plan to twelve (12) months as a post petition direct assessment) and furthermore created a large post-petition escrow shortage which was then further assessed against Debtors for payment within 12 months. The combined assessments increased Debtors' post petition monthly payments by $ 240.57.

11 U.S.C. § 362(a) protects debtors in Bankruptcy from any attempt (1) "to recover a claim against the debtor that arose before the commencement of the case under this title;" and (6) "any act to collect, access, or recover a claim against the debtor that arose before the commencement of the case under this title." Attempts to narrowly define or circumscribe what is a claim in bankruptcy have been repeatedly rejected by all Courts (including this Court in *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991) and *Cohen v. de law Cruz*, 523 U.S. 212, 218 (1998)) in favor a broad fully encompassing scope consistent with the definition of a claim as set forth by Congress in the Bankruptcy Code (11 U.S.C. § 101(5)). The Third Circuit, relying on its recent ruling in *In re Grossman's Inc.*, 607 F.3d 114, 133 (3rd Cir., 2010) (en banc) correctly realized that the Respondent's requirement to pay pre-petition escrow deposits, as explicitly contained in its mortgage contract with Petitioner was an "enforceable obligation" and thus, a claim in bankruptcy. The direct collection of any portion of the pre-petition escrow deposits by the Petitioner after the filing and notice of the Bankruptcy was in direct violation of 11 U.S.C. § 362(a).

While the issue was not reached by the Third Circuit, it is equally relevant that irrespective of the definition of "claim in bankruptcy," a debtor under chapter 13 of the Bankruptcy Code has the right to cure "*any*" pre-petition default under 11 U.S.C. § 1322(b)(5) by repaying the amount of that default (the missed prepetition payments, including the escrow portion of those payments) through the Chapter 13 plan and maintaining the post petition contractual payments. Thus, the practice by the Petitioner of bifurcating the pre-petition escrow arrears and directly assessing and collecting a portion of them from Debtors by re-assessing their post petition escrow accounts is in violation of not one, but two separate and explicit statutory enactments.

The attempt by the Petitioner to present the question and the issue of the case as an infringement upon Petitioner's statutory rights under RESPA (12 U.S.C. § 2601 *et. seq.*) vastly overstates the statutory reality inasmuch as nothing in the Real Estate Settlement Procedures Act (RESPA, *id.*) nor even the administrative Regulation X promulgated pursuant to RESPA mandates the approach to pre-petition arrears adopted by the Petitioner. The Regulations under 24 C.F.R. § 3500.17 "*allow*" the re-analyzation in the event of an escrow shortage, but (1) do not require it; nor (2) do they endorse the simple elimination of a projected escrow balance and replacement of it with a zero starting basis - the practice adopted by Petitioners to collect the pre-petition escrow arrears as part of the post petition reassessment. This argument further ignores that in the facts of the case at hand, there was no natural post petition escrow shortage, only the pre-petition arrears. The "shortage" complained of was self-created by the Petitioner's post-petition

re-assessment and elimination of the projected escrow balance. In short, Petitioner has itself created the practice at conflict with the Debtor's statutorily protected rights under the Bankruptcy Code and it need not be. There is no conflict between RESPA and the Bankruptcy Code which compels this Court's intervention.

REASONS FOR DENYING THE PETITION

I. There is No Split of Authority

The fundamental holding of the Third Circuit in this case, that escrow deposits due and owing prior to bankruptcy, are a claim in bankruptcy and thus, subject to the Automatic Stay provisions of 11 U.S.C. § 362(a), is in uniformity with other decisions around the country.[1] In fact, Petitioner has not provided a single precedent other than the decision reversed below that supports its analysis and interpretation.[2] The Fifth Circuit in *Campbell v.*

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1. A thorough analysis of the issue resulting in the identical conclusion as the Third Circuit, and explaining the proper method for post petition escrow accounting consistent with both RESPA and the Bankruptcy Code is found in *In re Fitch*, 390 B.R. 834 (Bankr. E.D., La. 2004)

2. Reliance upon *In re Villarie*, 648 F.2d 810 (2nd Cir., 1981) is misplaced as it not on point, is based on New York City's administrative law and here, Debtors' mortgage contract explicitly gives the mortgagee the right to take all legal action upon the missed pre-petition escrow payments (explicitly providing for "taxes levied or *to be levied* against the property" as part of the escrow payment obligation), including foreclosure - therefore making it an enforceable obligation and a "claim" in bankruptcy. Furthermore, even the definition of a claim as set forth by the 2nd Circuit in 1981 by the *Villarie* opinion, as dependent upon

Countrywide Home Loans Inc., 545 F.3d 348 (5th Cir., 2008) clearly and unequivocally stated that:

> [W]e agree with the Bankruptcy Court that the pre-petition escrow payments are a "claim" for the purposes of the automatic stay, a holding that does not limit Countrywide's rights under RESPA or the Bankruptcy Code. The automatic stay operates to halt collection of pre-petition claims, even those claims held by a creditor protected by the anti-modification provisions of Section 1322(b)(2). *Id.* at 354.

Similarly, the Ninth Circuit BAP in *Zotow v. Johnson and BAC Home Loan Servicing, LP* (the successor entity for Petitioner, Countrywide), 432 B.R. 252 (9th Cir., BAP, 2010) relied upon *Campbell* to accept without issue that the pre-petition escrow was a claim in bankruptcy and should be part of the mortgagee's proof of claim for payment in the bankruptcy chapter 13 plan.[3]

Attempts by the Petitioner to create a substantive distinction between the Fifth Circuit opinion in *Campbell*, and the Third Circuit, herein, create a distinction without

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the establishment of personal liability on a "debt" under 11 U.S.C. § 101(12) (then § 101(11)) is quite questionable given this Court's broader definition of a claim in *Johnson v. Home State Bank*, 501 U.S. 78 (1991) and specific holding that personal liability is not required to establish such a claim in bankruptcy.

3. It is of note that BAC Loan Servicing did not appeal the Bankruptcy Court ruling and acceptance of *Campbell*, and the only issue that went before the BAP for determination was whether the specific acts performed by BAC constituted a violation of the Automatic Stay.

a purpose. The mechanical difference asserted by the Petitioner relates to the interpretation of Texas property tax law under the Texas Tax Code § 32.05(b) as opposed to the calculation mandated by New Jersey statute under N.J.S.A. § 54:15-6, which provides for quarterly payments of same. The identical ruling, however, is that those tax obligations which were due and owing as part of the escrow deposit based on the parties' mortgage contract prior to the date of the bankruptcy are in fact a pre-petition claim in bankruptcy and the automatic stay per 11 U.S.C. § 362(a) applies. Where, as here, the mortgagee billed the Debtors for eight pre-petition payments of principal, interest and escrow, the claim is bankruptcy is for the same eight payments of principal, interest and escrow. The attempt to segregate a portion of those arrears and directly collect them against the debtors post-petition is a violation of Bankruptcy law. On this central and dispositive issue of the holding, there is no dispute, conflict or disparity.

II. The Holding of the Third Circuit is in Accord with Long Established Definitions of a "Claim" in Bankruptcy.

This Court need not look beyond its' own precedent to determine the correctness of the Third Circuit in this matter. In *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991), the Court confirmed Congress' intent to adopt the broadest available definition of a claim. That definition as set forth in 11 U.S.C. § 101(5) is nearly all encompassing, and includes any (A) "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmeasured, disputed, legal, equitable, secured or unsecured or (B)

"right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured."[4] The Court further clarified that a claim under Bankruptcy law is a "right to payment" which is "nothing more or less than an enforceable obligation." *Cohen v. de la Cruz.*, 523 U.S. 213, 218 (1998). *See also Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990); *FCC v. NextWave Personal Communications Inc. et. al.*, 537 U.S. 293 (2003).

In applying this far reaching standard, both the Third Circuit below and the Fifth Circuit in *Campbell* looked to the underlying mortgage contract between the parties. The relevant terms of the Respondents' mortgage were set forth by the Third Circuit (629 F.3d at 139) (Petitioner's Writ, pp. 7a - 9a) which detail the mortgagor's obligation to pay the escrow deposits each and every month along with the principal and interest set forth in the note, including all amounts for "taxes and special assessments levied or to be levied against the property..," pledges said amounts as additional security for all sums secured by the Security Agreement[5], and provides for default and foreclosure in the event of non-payment. Not only did the Fifth and

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4. Given that both "contingent" and "matured" rights are deemed to be claims in bankruptcy, the distinction raised by the Petitioner between the Fifth and Third on this basis is unpersuasive.

5. Petitioner's assertion that they merely hold these funds "on behalf of a borrower" (Petitioner's Writ, p. 7) is belied by this provision of the actual mortgage.

Third Circuits correctly conclude that these obligations are an enforceable obligation under the definition of a claim in bankruptcy, it would be exceedingly difficult and and require a convoluted parsing of words to conclude otherwise. Yet that is exactly what the Petitioner requests of this Court. As this Court has repeatedly recognized, "if the text of the statutory language is unambiguous and the statutory scheme is coherent and consistent," (as is 11 U.S.C. § 101(5)), the inquiry must cease. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997).

Having found that the contractual obligations to pay the pre-petition mortgage deposits are "claims" in bankruptcy, there can be no issue that the provisions of 11 U.S.C. § 362(a) (the "Automatic Stay") apply to preclude the self-help formula adopted by Respondent to collect these monies directly from Debtors post-petition. The automatic stay prohibits any actions (1) "to recover a claim against the debtor that arose before the commencement of the case under this title;" and (6) "any act to collect, access, or recover a claim against the debtor that arose before the commencement of the case under this title." (11 U.S.C. § 362(a)). Both Circuit Courts of Appeals correctly analyzed and determined that since the arrears are claims in bankruptcy, the automatic stay by definition applies. *Rodriguez, supra.*, 629 F.3d at 142, Petitioner's Writ, p6a; *Campbell, supra*, 545 F.3d at 354.[6]

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6. In the Fifth Circuit, the Court determined however, that ultimately a stay violation had not occurred based on the mere filing of a proof of claim by Countrywide, thus, there was no basis for damages under 11 U.S.C. § 362(k). That issue, factually distinct herein, given Countrywide's direct billing and actual post petition collection of the pre-petition arrears, was explicitly remanded by the Third Circuit for determination based on its definition of a

It is respectfully asserted that any other conclusion would render the provisions of the statutory text of section 362(a), the most central protection afforded to bankruptcy debtors under the bankruptcy code devoid of meaning and effect. Such a proposed interpretation cannot be the basis for granting a Petition for Certiorari.

III. Petitioner's Argument would also undermine the Right to Cure Pre-Petition Defaults Through a Bankruptcy Plan Under 11 U.S.C. Section 1322(b)(5)

Ultimately, as was argued to the Third Circuit[7], the determination of whether the pre-petition escrow arrears are a "claim," or simply a default as asserted by the Petitioners, it makes little difference to their argument. Debtors possess the explicit right under the Bankruptcy Code provision § 1322(b)(5) to cure that default. The code states:

> notwithstanding paragraph (2) of this subsection, [the anti-modification provision], provide for ***curing of any default*** within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured

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willful stay violation under *In re Lansdale Family Restaurant Inc.*, 907 F.2d 826 (3rd Cir., 1992) and is presently pending before the United States Bankruptcy Court for the District of New Jersey.

7. Inasmuch as the Third Circuit determined the escrow arrears to in fact be a claim in bankruptcy and subject to the automatic stay provisions of 11 U.S.C. § 362(a), it never reached the issue of Debtors' right to cure any default established under 11 U.S.C. § 1322(b)(5).

> claim on which the last payment is due after the date on which the final payment under the plan is due; {emphasis added}

The overwhelming flaw in the Petitioner's argument is that its proposed interpretation of Regulation X under RESPA, permitting it to bifurcate the pre-petition escrow arrears and re-assess at will post petition, actually harmonizes nothing. Instead, in the name of protecting alleged rights under RESPA, it negates the specific statutory protections afforded debtors under the bankruptcy code not only under the automatic stay, but also to use the provisions of chapter 13 to cure defaults and return them to the status quo at the time of the bankruptcy filing. Once again, the statute here is unambiguous and not subject to interpretation due to its clarity. *Robinson, supra.*

Accordingly, when the Respondent debtor in this case filed its bankruptcy with a pre-petition default of $ 20,844.40, including eight payments of principal, interest and escrow, section 1322(b)(5) provided them the clear and unequivocal right to put all of those monies into the chapter 13 plan to cure that default over a reasonable period of time. This precludes the bifurcation and re-assessment practice adopted by Petitioners to accelerate the repayment of those arrears.

The practice adopted by Countrywide is not benign. On October 10, 2007, the date of the Respondents' Bankruptcy filing, the escrow portion of the debtors' mortgage arrears and default (eight missed payments of $ 707.20) totaled $ 5,657.60. This included not only the monies to cover the actual escrow advances made by Countrywide prior to the

bankruptcy filing, but also maintenance of the *projected* escrow surplus (cushion as provided for under RESPA) in the amount of $ 2,494.89 which would have existed but for the pre-petition arrears. This was maintained by debtors' monthly escrow payments along with their mortgage interest and principal pursuant to the terms of the mortgage contract. The entire $ 5,657.60 was anticipated to be repaid and cured through the debtors' chapter 13 Plan pursuant to 11 U.S.C. § 1322(b)(5). Instead, Countrywide bifurcated the pre-petition arrears and filed a proof of claim for only a portion of it, $ 3,869.91.

Immediately upon receiving notice of the bankruptcy filing, Countrywide eliminated the projected escrow surplus (cushion) and replaced it with a zero balance. After eliminating that projected credit for the $ 2,494.89 and precluding its repayment through the bankruptcy plan, Countrywide recalculated the escrow forward from zero which created a substantial projected escrow shortage in the account, for which Countrywide then demanded payment within twelve (12) months. Therefore, instead of repaying the pre-petition escrow default of $ 5,657.60 through the chapter 13 plan as permitted under 11 U.S.C. § 1322(b)(5), the Debtors were required to pay $ 7,441.90 (3,869.91 through the chapter 13 plan and another $ 3,572.07 in twelve (12) months under the Petitioner's post-petition re-assessment of the escrow account). This result was imposed even though there existed no natural post-petition escrow shortage, only the pre-petition arrears to be cured through the plan. The post petition escrow shortage upon which Petitioner seeks its relief under RESPA was entirely manufactured by Countrywide through its elimination of the projected escrow balance in response to the Bankruptcy filing.

The concept of a cure in Bankruptcy means "taking care of the triggering event and returning to pre-default conditions. The consequences are thus nullified." *DiPierro v. Taddeo*, 685 F.2d 24 (2nd Cir., 1982), citing Fogel, Executory Contracts and Unexpired Leases in the Bankruptcy Code, 64 Minn.L.Rev. 341, 356 (1980), and Collier on Bankruptcy § 365.04 at 365-31-32 (L. King 15th Ed. 1981). *See also Frazer v. Drummond*, 377 B.R. 621 (BAP, 9th Cir., 2007), *In re Olsen*, 363 B.R. 908 (BAP, 8th Cir., 2007). Accordingly, petitioner's argument to this Court that without its bifurcation and re-assessment practice it will be deprived of its post petition escrow cushion under RESPA is quite misleading. If there was a cushion existing on the date of filing, as there was in the case at bar, that cushion is part of the default and will be included in the Debtor's statutory cure returning both parties to exactly the status quo existing prior to the default. That is the exact purpose of the statutory protection under 11 U.S.C. § 1322(b)(5) and would be abrogated if Petitioner's argument were accepted.

IV. There is no compelling reason under RESPA (12 U.S.C. § 2601 *et. seq*) to grant the Petition.

Petitioner's assertion that its rights under RESPA are compromised or otherwise affected is significantly exaggerated. It should be noted that other than general references to permitted re-assessments of escrow accounts as contained under Regulation X (24 C.F.R. § 3500.17), Petitioner cannot point to specific provision which would endorse its singular practice of eliminating a projected escrow surplus upon Bankruptcy filing and replacing it with a zero starting balance. Given further that in so doing, the mortgagee has compromised the

debtors' right to cure default arrears as permitted by the bankruptcy code (section 1322(b)(5)), and further violated the automatic stay (section 362(a)) by collecting a pre-petition obligation, any argument for a compelling reason for the granting of the Petition appears lacking. While Petitioner repeatedly asserts the need to "harmonize" conflicting statutes, as set forth *Morton v. Manchiuria*, 417 U.S. 535 (1974), the reality as recognized by both the Fifth and the Third Circuits is that there exists no real conflict except that created by the Petitioner itself.

Initially, it bears repeating that the statutory enactment that is RESPA (12 U.S.C. § 2601 *et. seq.*) does not contain the specific basis for the Petitioner's claim. Rather, the Petitioner's argument is based upon its own interpretation of the rights afforded it under the Administrative Regulation X (24 C.F.R. § 3500.17). Such an elevation of a regulatory interpretation over the clear and precise statutory enactments of Congress is contrary to all established principals of statutory construction. *Rodriguez v. Compass Shipping Co., Ltd.*, 451 U.S. 596 (1981); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148 (1976). Exceptions to "clearly delineated statutes" should only be made to avoid absurd results. *U.S. v. Rutherford*, 442 U.S. 544 (1979). Secondly, even the regulation in question does not necessarily require the result proffered by the Petitioner. Reg. X as cited by the Petitioner merely "*allows*" but does not compel the re-analyzation of the escrow account (24 C.F.R. § 3500.17(f)(1)(ii)). In fact, RESPA specifically envisions situations where the shortage is permitted to continue and no action is taken. 24 C.F.R. § 3500.17(f)(3)(A), (f)(4)(i)(A). Finally, the re-analyzation of the account is be performed "as needed" to recover actual or anticipated

deficiencies. *Id.* Since the bankruptcy code as set forth in 11 U.S.C. § 1322(b)(5) already provides an established method for full and complete repayment of any and all defaults, including the "actual or anticipated deficiencies" stemming from the pre-petition escrow account,[8] one finds it difficult to perceive this proposed practice as essential and necessary to avoid an inherent conflict between the various Congressional statutory enactments.

Petitioner forcefully asserts, as it has done so below, that the opinions of the Third and Fifth Circuit Courts of Appeal require it to make an "involuntary loan" to the debtors in bankruptcy. While the expression is perhaps rhetorically noteworthy, it is also inaccurate. The only real issue that is in dispute is the timing of the repayment of the pre-petition escrow deposits (which includes the escrow surplus or cushion), which would be either cured over the chapter 13 plan (up to sixty (60) months) or over twelve (12) months as demanded by the Petitioners.[9] There existed

8. It bears reiteration that the issue in this Petition is the pre-petition escrow arrears and that the Respondent debtors had a projected surplus in their escrow account upon the bankruptcy filing. It is the repayment of those escrow arrears which includes that projected surplus through the Bankruptcy as instructed by both the Fifth and Third Circuits, versus the direct collection of it through a post petition escrow re-analysis as proposed by Petitioner that is in issue. This does not impede Petitioner's rights under RESPA to re-analyze the account for a true post petition shortage, such as a post petition increase in property taxes. *See Campbell, supra.* at 354

9. As noted herein, this proposed method by Countrywide also generates an additional escrow cushion for the mortgagee ($ 1784.38 beyond the actual pre-petition escrow arrearage in this case), which upon the conclusion of the chapter 13, barring superceding events, would result in an escrow surplus significantly higher than even permitted under RESPA. 24 C.F.R. § 3500.17(c)(ii)

no other shortage and the Debtors' post petition monthly mortgage payments includes the dollar for dollar escrow deposits for the post petition year's escrow obligations. Thus, the issue is not that the mortgagee is forced to loan money to fund post petition advances, but rather the rate at which it is repaid its pre-petition escrow cushion.[10] Presumably that is settled law by the establishment of 11 U.S.C. § 1322(b)(5).

To the extent that a mortgagee must disperse any funds which temporarily increases the negative balance of the escrow account, it stands no differently than any other secured creditor awaiting repayment through a chapter 13 plan, but is prevented from liquidating the collateral to obtain its value immediately, or must even expend some funds to protect its interests in the security. It cannot be nor is suggested that a chapter 13 cure does not impact the rights of a mortgagee, but Congress clearly and explicitly anticipated that possibility when making the anti-modification rights of a secured creditor in residential real estate (The Anti-Modification provisions of 11 U.S.C. § 1322(b)(2)) subordinated to the rights of a debtor to cure any default in bankruptcy (§ 1322(b)(5)). It has long been recognized that the anti-modification provisions do not create a blanket immunization for a mortgagee. *Nobelman v. American Savings Bank*, 508 U.S. 324 (1993).

Accordingly, the impact on a mortgagee by the dual opinions of the Fifth Circuit in *Campbell* and by the Third,

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10. Even the repayment of the cushion as demanded by Countrywide through the post-petition re-assessment, effected over twelve (12) months leaves the mortgagee in the same position upon its advancement of funds. The only issue in dispute is how quickly the escrow cushion projected for the date of the bankruptcy filing is repaid.

herein in *Rodriguez*, is not significantly consequential. Mortgage arrears include all monies contractually due prior to the date of filing. Those monies, which invariably will include the escrow surplus or cushion are a claim in Bankruptcy and will be repaid in full in accordance to established law under the Bankruptcy Code. If a mortgagee attempts a self help remedy to accelerate (and enhance) that repayment and collect it directly, as done by Countrywide on the facts of this case, it has violated the Bankruptcy Code. There is no compelling basis from any analysis under RESPA which mandates the subordination or outright elimination of these statutory rights under the bankruptcy code.

CONCLUSION

For the foregoing reasons, it is respectfully asserted that the Petitioner has not demonstrated any compelling reason for the granting of the Petition and it should be denied.

Respectfully submitted,

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