

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ResCap Liquidating Trust,

Court File No. 16-cv-4070 (SRN/HB)

Plaintiff,

v.

Primary Residential Mortgage, Inc.,

Defendant.

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR
ATTORNEY'S FEES, COSTS, AND PREJUDGMENT INTEREST**

FILED UNDER SEAL

TABLE OF CONTENTS

INTRODUCTION 1

FACTUAL BACKGROUND 3

A. PRMI WAS AWARE OF ITS LIABILITY FOR FEES, COSTS, AND INTEREST 3

B. PRMI DROVE UP THE PARTIES’ LITIGATION FEES AND COSTS..... 5

C. RESCAP HAS PROPERLY CALCULATED ITS FEES AND COSTS 7

 1. ResCap Considered Four Types Of Direct And Indirect Fees And Costs 8

 2. Plaintiff Seeks \$11,813,162.18 in Direct Fees and Costs..... 11

 3. Plaintiff Seeks \$1,733,697.48 in Indirect Fees and Costs 12

ARGUMENT..... 13

I. RESCAP SHOULD BE AWARDED ITS FEES AND COSTS..... 13

II. RESCAP SHOULD BE AWARDED PREJUDGMENT INTEREST 18

CONCLUSION 21

Plaintiff ResCap Liquidating Trust (“ResCap”) respectfully submits this memorandum in support of its motion for an award of attorney’s fees, costs, and prejudgment interest against Defendant Primary Residential Mortgage, Inc. (“PRMI”).

INTRODUCTION

This Court’s prior decisions in ResCap’s case against Home Loan Center Inc. (“HLC”) largely govern this motion, pursuant to which ResCap is seeking an award of \$13,546,859.66 in attorney’s fees and costs, \$1,999,180.27 in pre-Award prejudgment interest, and post-Award prejudgment interest through the date of final judgment.

First, now that the Court has held PRMI liable for indemnification of ResCap under the Client Guides (the “Guides”), directing it to pay ResCap \$5.4 million in damages (the “Award”), *In re ResCap Liquidating Tr. Litig.*, 2020 WL 4728109, at *91 (D. Minn. Aug. 14, 2020) (“FOF/COL”), ResCap is entitled to an award of its litigation fees and costs in prosecuting this suit to enforce the Guides. “As a general rule in Minnesota, each party bears its own attorney’s fees, absent a statutory or contractual exception, such as the fee-shifting provision in the [] Guide[s].” *In re RFC & ResCap Liquidating Tr. Litig.*, 399 F. Supp. 3d 827, 839 n.15 (D. Minn. 2019) (“*HLC Fee Award*”).¹ The Guides provide that, in addition to PRMI’s obligation to indemnify RFC for all losses resulting from an event of default or alleged violation of law, PRMI “also shall indemnify RFC and hold it harmless against all court costs, attorney’s fees and any other costs, fees and expenses incurred by

¹ PRMI’s sale of loans to RFC was governed by two Client Contracts that are governed by Minnesota law and incorporate the Guides. *See* FOF/COL at *5.

RFC in enforcing the [Client] Contract.” PTX-001 § 274; PTX-032 § A223; PTX-1055 § A212; *accord In re ResCap Liquidating Tr. Litig.*, 428 F. Supp. 3d 53, 66-68 (D. Minn. 2019); *HLC Fee Award* (awarding ResCap its reasonable litigation fees and costs under the Guides).

Although the parties did not negotiate a “reasonableness” requirement into their indemnification agreement (as the Court recognized in *HLC Fee Award* at 841), the fees ResCap seeks are reasonable under the approach articulated in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) and adopted by Minnesota courts. The Court should accordingly award ResCap \$13,546,859.66, comprised of \$11,813,162.18 in direct fees and costs and \$1,733,697.48 in indirect fees and costs, as detailed below.

Second, the Court should award prejudgment interest. Awards of prejudgment interest “serve[] the . . . objectives of compensating [the plaintiff] for the lost use of its money . . . and encouraging settlement.” *In re RFC & ResCap Liquidating Tr. Litig.*, 2019 WL 1237166, at *5 (D. Minn. Mar. 18, 2019) (“*HLC Interest Award*”). Those objectives favor an award here, where PRMI is the last pending action of over 80 cases that Residential Funding Company (“RFC”) and ResCap filed against originators asserting claims for breach of contract and contractual indemnification (together, the “ResCap RMBS Litigation”).² Indeed, PRMI is one of two cases in the ResCap RMBS Litigation

² See *HLC Fee Award* at 832 & n.2. The 73 actions filed in 2013 and 2014 are referred to herein as “Wave I” actions and the ten actions filed in 2016 and 2017 are referred to herein as “Wave II” actions. The Wave II action filed against InterLinc Mortgage Services, LLC (“InterLinc”) differed from the other actions referenced herein in that it asserted

that insisted upon a trial; one of two Wave II cases that did not settle relatively quickly,³ and the only case that proceeded to trial even after this Court had entered judgment, including attorney's fees, costs, and prejudgment interest, against HLC. *See HLC Interest Award* at *5 (“[The] risk of incurring prejudgment interest and attorney’s fees . . . likely animated many, if not all, of the settlements . . . HLC chose to proceed to trial, where it lost.”). The Court should accordingly award \$1,999,180.27 in interest, plus interest through the date of final judgment, calculated on the same basis as in *HLC Interest Award*.

FACTUAL BACKGROUND

A. PRMI WAS AWARE OF ITS LIABILITY FOR FEES, COSTS, AND INTEREST

ResCap filed this action on December 2, 2016 (the “Commencement Date”),⁴ Compl. [PRMI Doc. No. 1.]⁵ In late July 2018, the Court stayed further proceedings in

successor liability theories. This motion omits discussion of ResCap’s case against LendingTree LLC and LendingTree, Inc.

³ Eight Wave II cases settled and were closed within a year and a half of filing: 1.6 months (17-cv-0192, Capital One), 2 months (17-cv-0201, Summit), 3.3 months (17-cv-0197, BMO Harris/Amerus), 4.6 months (17-cv-0194, First Tennessee), 8.2 months (17-cv-0198, WMC Mortgage), 9.6 months (17-cv-0203, Community Trust), 10.4 months (17-cv-0196, PNC) and 18.1 months (16-cv-4067, US Bank). Declaration of Heather Christenson (“Christenson Decl.”) ¶ 5. But this case did not settle despite mediations conducted on October 20, 2017 and June 25, 2019. *Id.*

⁴ Between December 11, 2013 and December 2, 2016 (the “Tolling Period”), ResCap and PRMI entered into a series of Tolling and Forbearance Agreements to negotiate in good faith and resolve ResCap’s claims absent litigation, but reached impasse. Christenson Decl. ¶ 3.

⁵ Unless otherwise noted, citations to “Doc. No.” are to the consolidated docket, No. 13-cv-3451 and citations to “PRMI Doc. No.” are to the PRMI docket, No. 16-cv-4070.

PRMI pending the outcome of summary judgment motions, *Daubert* motions, and the HLC trial. *See* 7/24/2018 Hr’g Tr. [Doc. No. 4061] 31:18–32:21 (“I know [a stay] wasn’t one of the [parties’] proposals . . . [but] given the concerns about this testimony before trial, . . . the benefit of hearing from the Court on summary judgment and *Daubert* and . . . the HLC trial, . . . the delay . . . will be worth it.”).⁶ In HLC, the jury returned a verdict of \$28.7 million in favor of ResCap [Doc. No. 4705], and the Court subsequently awarded ResCap an additional \$23,081,252.31 in attorney’s fees and costs (*HLC Fee Award* at 862) and \$14,066,931.50 in interest (*HLC Interest Award* at *9). Within three months of the conclusion of the HLC trial, all remaining Wave I defendants had settled, and by August 2019, PRMI was the only remaining case. *See HLC Fee Award* at 861 (“One can reasonably infer that the HLC verdict . . . impact[ed] the remaining cases, as all of them settled within two months of the HLC verdict.”); Christenson Decl. ¶ 7.

Following an unsuccessful mediation on June 25, 2019 (Christenson Decl. ¶ 5), PRMI proceeded to a 13-day bench trial in February and March 2020, during which the parties introduced over 300 exhibits and testimony from 27 witnesses. *See* FOF/COL at *4. The parties filed proposed findings of fact and conclusions of law on April 17, 2020 [Doc. Nos. 5515-5518]. The Court issued its 202-page FOF/COL, holding PRMI liable for indemnification under the Guides and directing PRMI to pay the Award on August 14,

⁶ The stay was lifted on February 12, 2019, after the HLC trial ended and the Court resolved certain disputes concerning the scope of remaining discovery in this case. [*See* Doc. No. 4999.]

2020 (the “Award Date”). Thereafter, the Court entered judgment on August 17, 2020 (the “Judgment Date”). [Doc. No. 5528.]

B. PRMI DROVE UP THE PARTIES’ LITIGATION FEES AND COSTS

From the outset, ResCap endeavored to streamline this case. However, PRMI chose to re-litigate scores of previously-decided issues and pursue a meritless motions, forcing ResCap to expend significant, unnecessary resources. To illustrate, PRMI:

- Submitted a substantially final list of 37 current and former RFC employees PRMI sought to depose, which included 15 witnesses previously deposed during the bankruptcy and Wave I. *See* 4/19/2018 Hr’g Tr. [Doc. No. 3498] 67:22-69:8.
- Unsuccessfully moved for a jury trial years after deciding not to request a jury trial in accordance with Federal Rule of Civil Procedure 38, requiring the parties to submit briefing and deliver oral argument. [*See* Doc. Nos. 5114, 5122, 5174.]
- Refused ResCap’s proposal to prohibit asking ResCap’s experts questions that were duplicative of questions already asked of the same experts during Wave I. *See* 9/13/2019 Ltr. [Doc. No. 5203] at 2-3.
- Declined to assess the applicability of the Court’s prior rulings to its case and instead insisted that ResCap waste time and money relitigating such issues anew as part of summary judgment and *Daubert* briefing and argument. *See* 9/13/2019 Ltr. [Doc. No. 5204] at 3; *see also* 8/20/2019 Ltr. [Doc. No. 5198] at 1-2 (describing PRMI expert rebuttal opinions rendered inadmissible under the Court’s prior orders and/or irrelevant to the PRMI-specific defenses the Court permitted).
- Required the parties to present detailed loan-level re-underwriting breach evidence through two expert witnesses despite the fact that such breaches were determined in ResCap’s sole discretion under the Guides.
- “[I]dentifi[ed] . . . 13 live trial witnesses, deposition designations for 11 others (over nine hours of runtime), and serv[ed] . . . 732 trial exhibits (excluding 703 and 1006 materials).” 1/21/2020 Ltr. [Doc. No. 5380] at 1.

All the while, ResCap warned PRMI of the mounting costs required to respond to the above that PRMI would be obligated to indemnify. *See e.g.*, 4/25/2019 Ltr. [Doc. No. 5060] at 1 (noting that certain of PRMI's requested 30(b)(6) topics "are not relevant to any issue, and at minimum are not proportional to the needs of the case."); 5/9/2019 Hr'g Tr. [Doc. No. 5105] 22:10-13 ("[I]f we go down that route, that's exactly the kind of . . . attorney's fees and waste that . . . we had HLC complain about when we made our attorney fee application."); *id.* 30:19-31:2 ("[T]he Trust has concern, about whether . . . [it is] sensible to be engaging in . . . an extensive loan-by-loan process, rebuttal reports, supplemental reports, multiple depositions of ten experts, where at best it would be of marginal relevance to the question of subjective bad faith."); Pl.'s Mot. For Protective Order [Doc. No. 5140] at 1 ("PRMI is inexplicably insisting on dragging the Trust and the Court into an irrelevant, expensive, and time-consuming process of rebuttal and reply reports, depositions, and associated motion practice (and, in PRMI's view, trial testimony) on those same issues."); 6/25/2019 Hr'g Tr. [Doc. No. 5173] 11:23-12:1 ("The Trust fears that we're headed in the same direction here. . . . [I]t is an extremely expensive, wasteful and time consuming project to take on"); 9/17/2019 Hr'g Tr. [Doc. No. 5209] 18:2-5 ("[That's] the definition of waste. . . . [and] the Trust is trying to avoid . . . spending money needlessly on issues that have already been fully discovered."); 1/21/2020 Ltr. [Doc. No. 5380] at 5-6 ("PRMI's wasteful and disproportionate approach to trial is highlighted in the evidence it intends to offer regarding a single loan that it originally underwrote to Countrywide guidelines . . . [which] accounts for approximately \$30,000 of Plaintiff's damages claim."); Trial Tr. 22:18-23 ("[T]he amount of time and energy that's been devoted to this by PRMI

has been excessive relative to the value of those claims But nonetheless, that's the way in which it's been presented. It's therefore the way in which the Trust has had to respond and it's cost us a lot of time and money”).

C. RESCAP HAS PROPERLY CALCULATED ITS FEES AND COSTS

As detailed below and in the accompanying Declaration of ResCap's Chief Finance Officer Jill Horner (“Horner Decl.”), ResCap used the methodology accepted by the Court in *HLC Fee Award*, with some adjustments, to analyze and identify the direct and indirect litigation fees and costs it incurred in this action. Horner Decl. ¶¶ 6-11. Direct fees and costs were incurred solely for the PRMI action and included, for example, preparing the complaint and settlement negotiations during the Tolling Period, offensive depositions of PRMI witnesses, reunderwriting and analysis of PRMI loans, and work related to dispositive motions and the PRMI trial. *Id.* ¶ 9. Indirect fees and costs were incurred for all active Wave I and II cases, or a subset thereof, and included, for example, preparation for Wave II case management conferences and Wave I expert work related to the global sample and the reasonableness of the bankruptcy settlements (which work was relevant to the PRMI action). *Id.* ¶¶ 10-11, 18. In its analysis, ResCap considered the invoices submitted by the professionals and vendors used in the litigation through July 31, 2020, the last date invoices were available for this action.⁷ *See id.* ¶ 6.

⁷ Because ResCap has incurred and will incur additional fees and costs after July 31, 2020 related to this Motion, ResCap seeks leave to submit documentation including supplemental declarations of those fees and costs once available and requests that those fees and costs be awarded in full for the reasons stated herein. *See HLC Fee Award*, at 857-58 (permitting recovery of fees incurred to prepare fee motion).

In support of this motion, ResCap submits the same type of evidence this Court approved, *HLC Fee Award* at 843 (“ResCap has thoroughly documented its methodology”), including: (i) the Horner Declaration; (ii) the Christenson Declaration; (iii) the Heeman Declaration; (iv) 573 full or redacted invoices showing detailed time entries and time spent;⁸ and (v) summaries of invoices for 24 professionals and witnesses. As in *HLC Fee Award*, ResCap has not redacted legal counsel invoices given the burden of reviewing thousands of pages of time entries and given that redaction would render the time entries meaningless as nearly all contain attorney-client privileged material and work product.⁹ Instead, ResCap provides the full unredacted invoices of legal counsel to the Court for *in camera* review.

1. ResCap Considered Four Types Of Direct And Indirect Fees And Costs

The fees and costs ResCap considered relate to the following categories: (i) legal counsel; (ii) experts and their support firms; (iii) document vendors; and (iv) witnesses and trial vendors. Horner Decl. ¶ 7.

Legal Counsel: ResCap seeks reimbursement from PRMI of a portion of the fees and costs charged by four law firms: (i) lead counsel, Quinn Emanuel Urquhart & Sullivan,

⁸ ResCap has not submitted invoices for the witnesses, trial office space, or trial lodging. These invoices reflect only costs for the PRMI trial and depositions that are reproduced in the summaries.

⁹ See *HLC Fee Award* at 845 (“[T]he redactions were proper, and the full billing entries need not be disclosed.”); see also *Bruckelmyer v. Ground Heaters, Inc.*, 2003 WL 21524741, at *3 (D. Minn. June 5, 2003) (“[I]n recognition of the privileged status of the time entries of Plaintiff’s counsel,” court limited defendant’s review to the “total fees and costs being requested.”).

LLP (“Quinn”), (ii) Minnesota-based counsel, Spencer Fane LLP (“Spencer Fane”); (iii) the firm that Minnesota-based counsel was at until January 8, 2019, Felhaber Larson Fenlon & Vogt, P.A. (“Felhaber”); and (iv) RFC’s prior counsel that continued work in this litigation, Carpenter Lipps & Leland LLP (“CLL”). *Id.* ¶ 13. ResCap reviewed the monthly invoices submitted by each firm to identify direct and indirect fees and costs to charge to PRMI. *See id.* ¶¶ 14-19, 24, 26-27, 29, 31-32, 34, 36-37. For Quinn, ResCap used search terms and a manual review of time entries to identify time entries reflecting direct and indirect work billed to a matter for all cases in the ResCap RMBS Litigation and a matter for all Wave II cases. *Id.* ¶¶ 14-19 & Exs. 4-6. For Spencer Fane, Felhaber, and CLL, ResCap included direct fees and costs billed to a PRMI-specific matter and pro rata indirect fees and costs billed to a matter for the Wave II cases. Horner Decl. ¶¶ 24, 29, 34. ResCap conservatively elected not to pursue \$126,159.78 fees for the 58 legal professionals identified in the Horner Declaration, who billed a relatively small number of hours on this action. *Id.* ¶¶ 20, 25, 30, 35.

Experts and Support Firms: ResCap seeks reimbursement from PRMI of a portion of the fees and costs charged by 11 experts and support firms. *Id.* ¶¶ 39-40, 44, 49, 55, 59 & Ex. 22. These professionals performed work related to reunderwriting, appraisal,¹⁰ bankruptcy settlements, damages, and securitization. *Id.*

¹⁰ ResCap incorporated the appraisal analysis into the reunderwriting analysis presented at trial. The parties determined they did not need to introduce appraisal expert witnesses at trial only after disputed appraisal issues were resolved on *Daubert*. Christenson Decl. ¶ 8.

ResCap reviewed the invoices submitted by the experts and their support firms to identify direct and indirect fees and costs to charge to PRMI. *Id.* ¶¶ 10, 39, 41-42, 45-47, 50, 52, 56-57, 60. Direct fees and costs were associated with work conducted for the PRMI case. *Id.* Indirect fees and costs included Wave I global sample work, building and verifying the Greenfield Automated Valuation Model (GAVM), the bankruptcy settlement analysis of Donald Hawthorne and his support firm, and the damages modeling performed by Bates White. *Id.*

Document Vendors: ResCap used NightOwl Discovery (“NightOwl”) to collect, process, review, search, and maintain the over 300,000 documents produced to PRMI. *Id.* ¶¶ 61-62. ResCap reviewed NightOwl’s invoices between November 2017 and April 2018 to confirm they related to the review and production of ResCap’s documents across the active Wave II cases. *Id.* ¶ 62. Accordingly, a pro rata portion of these indirect fees and costs were charged to PRMI. *Id.*

Witnesses and Trial Vendors: Plaintiff identified the following direct fees and costs for witnesses and trial vendors: (i) reimbursable costs of two trial witnesses (Renee Bangerter and Teresa Farley) and two deponents (Brenda Evans and Lisa Lundsten), (ii) costs for office space and lodging used during the trial, and (iii) trial graphics costs. *Id.* ¶¶ 64-69.

2. Plaintiff Seeks \$11,813,162.18 in Direct Fees and Costs

As detailed in the Horner Declaration, ResCap charged PRMI in full for direct fees and costs, Horner Decl. ¶ 70, which are summarized below:

Professional or Vendor	Direct Fees and Costs
Legal Counsel	
Quinn	\$5,910,117.48
Spencer Fane	\$2,771,239.14
Felhaber	\$475,930.68
CLL	\$176,208.55
Experts and Support Firms¹¹	
ButlerBank Consulting / Steve Butler (reunderwriting)	\$192,524.64
Opus (reunderwriting)	\$39,826.70
Greenfield Advisors / John Kilpatrick (appraisal)	\$20,847.63
Summit Consulting / Albert Lee (appraisal)	\$37,683.00
Allstate Appraisal / Steve Albert (appraisal)	\$222,843.75
Axinn Veltrop / Donald Hawthorne (bankruptcy settlements)	\$578,230.79
Compass Lexecon/Anthony Saunders (bankruptcy settlements)	\$24,324.03
Bates White / Karl Snow (damages)	\$933,441.40
AlixPartners / Louis Dudney (securitization)	\$53,823.00
Witnesses, Trial Vendors, Lodging	
Renee Bangerter, Teresa Farley (Trial Witnesses); Brenda Evans, Lisa Lundsten (Deponents)	\$115,958.48
Connect Litigation and Gamma Lending (Office Space)	\$111,379.31
TrialGraphix (Trial Graphics)	\$133,063.10
Hyatt Place (Lodging)	\$15,720.50
TOTAL	\$11,813,162.18¹²

¹¹ ResCap conservatively elected not to pursue a total of \$7,138.99.00 direct and indirect fees and costs for work performed by Real Info and Phoenix Advisors concerning appraisal valuation analysis. Horner Decl. ¶ 44 n.7.

¹² Although ResCap believes the Court also should award ResCap's contingency fee, it is not seeking such an award given the Court's contrary decision. *See HLC Fee Award* at 859-60. Such an award would have increased ResCap's direct fees and costs by [REDACTED] ([REDACTED] of the \$5.4 million award), plus [REDACTED] of the attorney's fees, costs, and interest awarded by the Court, for a total of approximately [REDACTED]

3. Plaintiff Seeks \$1,733,697.48 in Indirect Fees and Costs

ResCap analyzed the work associated with indirect fees and costs and identified the active cases in the ResCap RMBS Litigation for which the work was done, divided those fees and costs pro rata among the relevant active cases, and charged PRMI its pro rata portion. Horner Decl. ¶¶ 10, 70. ResCap did so because it was allocating work (such as the development of the damages model) that had to be done for an active case regardless of the number of loans the defendant itself originated or the losses on those loans. *See id.* ¶ 10. Defendant-specific work (*e.g.*, reunderwriting of a defendant's loans, reviews of a defendant's documents, or offensive depositions of a defendant's witnesses) was excluded from the indirect fees and costs. *See, e.g., id.* ¶ 56. The indirect fees and costs ResCap seeks from PRMI are summarized below:

Professional or Vendor	Indirect Fees and Costs
Legal Counsel	
Quinn	\$563,677.58
Spencer Fane	\$18,785.98
Felhaber	\$133,422.55
CLL	\$12,996.31
Experts and Support Firms¹³	
ButlerBank Consulting / Steve Butler (reunderwriting)	\$2,822.75
Barrent (reunderwriting)	\$11,688.20
Digital Risk (reunderwriting)	\$5,174.44
Greenfield Advisors / John Kilpatrick (appraisal)	\$46,698.66
Summit Consulting / Albert Lee (appraisal)	\$44,251.95
Allstate Appraisal / Steve Albert (appraisal)	\$9,006.29
Axinn Veltrop / Donald Hawthorne (bankruptcy settlements)	\$62,651.60

¹³ ResCap conservatively elected not to pursue a total of \$17,562.60 indirect fees and costs for common work performed in Wave I by Henry Hayssen and Retired Judge Richard Solum. Horner Decl. ¶¶ 55 n.9, 59 n.10.

Professional or Vendor	Indirect Fees and Costs
Bates White / Karl Snow (damages)	\$289,359.07
AlixPartners / Louis Dudney (securitization)	\$4,519.50
Document Vendors	
NightOwl	\$528,642.61
TOTAL	\$1,733,697.48

ARGUMENT

Under governing law, the Court should award ResCap (1) its litigation costs and fees of \$13,546,859.66 and (2) prejudgment interest at the statutory rate of 10% per year, comprised of (a) interest on the Award, from Commencement Date to Award Date, in the amount of \$1,999,180.27, and (b) interest on the sum of the Award and pre-Award interest, from Award Date to the date of the final judgment in this matter.¹⁴

I. RESCAP SHOULD BE AWARDED ITS FEES AND COSTS

Applicable law. “The amount of an attorney’s fee award must be determined on the facts of each case and is within the district court’s discretion.” *HLC Fee Award* at 841. The “starting point” is the calculation of the lodestar, which is “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley*, 461 U.S. at 433. Factors considered in determining reasonableness include:

(1) the time and labor required; (2) the nature and difficulty of the responsibility assumed; (3) the amount involved and the results obtained; (4) the fees customarily charged for similar legal services; (5) the experience, reputation, and ability of counsel; and (6) the fee arrangement existing between counsel and the client.

¹⁴ Although ResCap believes the Court also should award prejudgment interest on fees and costs, it is not seeking such an award given the Court’s contrary decision in *HLC Interest Award* at *8. Such an award would have exceeded \$5 million.

HLC Fee Award at 842 (citing *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 621 (Minn. 2008)) (the “*Milner* Factors”). The Court considers the same or similar factors in assessing whether to adjust the lodestar. *Id.* “However, in determining the lodestar, courts ‘need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection.’” *HLC Fee Award* at 842 (quoting *Fox v. Vice*, 563 U.S. 826, 838 (2011)). Nor should the determination of attorney’s fees spawn “a second major litigation.” *Fox*, 563 U.S. at 838 (quoting *Hensley*, 461 U.S. at 437). These factors favor an award of fees and costs in the amount ResCap is requesting for several reasons.

First, the *Milner* Factors support the fees requested in this case, which was labor intensive, requiring detailed analysis of more than 500 individual mortgage loans and residential properties, along with complicated causation issues and damages analysis. Christenson Decl. ¶ 10; *Milner*, 748 N.W.2d at 621 (factor 1). This case involved statistical sampling, allocation, and equitable estoppel defenses, which the Court deemed “complex” and “daunting” in the *HLC Fee Award* at 833-35 (factor 2). The applicable hourly rates here and the fee arrangement are comparable to those found by the Court to be reasonable in *HLC Fee Award*. *Id.* at 848-49; *see also* Heeman Decl. ¶¶ 16-19 (factors 4 and 6). ResCap’s counsel successfully obtained the Award, which amounted to 100% of its requested damages. *Milner*, 748 N.W.2d at 621 (factor 3). ResCap hired experienced, reputable, and able attorneys, including attorneys known for RMBS and trial litigation and attorneys with extensive knowledge of RFC. Heeman Decl. ¶¶ 9-10 (factor 5); *see also*

HLC Fee Award at 858 (“This case required the top-notch legal counsel that ResCap retained. . . . [T]he experience, reputation, and ability of Plaintiff’s counsel was outstanding.”).

Second, the hours spent and hourly rates are reasonable. The direct fees that ResCap seeks from PRMI represent approximately 13,850.2 hours of Quinn time, 9,172.8 hours of Spencer Fane time, 2,831.2 hours of Felhaber time, and 431.9 hours of CLL time. Horner Decl. ¶¶ 21, 26, 31, 36. Quinn’s applicable hourly rates, reflecting a [REDACTED] discount, ranged from \$150.00 to \$167.50 for paralegal and litigation support, and from \$160.00 to \$722.50 for attorney time. *Id.* ¶ 21. Spencer Fane’s applicable hourly rates ranged from \$100.00 to \$150.00 for paralegal and litigation support, and from \$145.00 to \$540.00 for attorney time. *Id.* ¶ 28. Felhaber’s applicable hourly rates ranged from \$130.00 to \$160.00 for paralegal and litigation support, and from \$85.00 to \$440.00 for attorney time. *Id.* ¶ 33. CLL’s applicable hourly rates ranged from \$280.00 to \$415.00 for attorney time. *Id.* ¶ 38.

Each firm’s total hours of work on this case are reflected below:

Firm	Direct Hours	Common Hours	Total Hours
Quinn	13,850.2	1,848.1	15,698.3
Spencer Fane	9,172.8	57.7	9,230.5
Felhaber	2,831.2	552.5	3,383.7
CLL	431.9	37.2	469.1
TOTAL	26,286.1	2,495.5	28,781.6

These hours are reasonable considering the amount of work that was required over the course of the three-and-a-half-year litigation. To illustrate, ResCap’s legal team:

- Produced over 300,000 documents (over 4 million pages) to PRMI.
- Exchanged 23 expert reports, expert rebuttal reports, supplements, and sur-replies with PRMI.
- Defended 11 expert and fact witness depositions noticed by PRMI.
- Took 10 expert and fact witness depositions involving PRMI.
- Fully briefed and argued an opposition to PRMI's motion for jury trial, cross summary judgment motions, cross *Daubert* motions, and three motions *in limine*, which together amounted to 7,279 pages of Plaintiff's submissions and approximately 10 hours of oral argument.
- Prepared for a trial for which PRMI identified over 900 potential exhibits and over 20 witnesses it intended to call live or through deposition.
- Conducted a 13-day bench trial in February and March 2020, during which the parties introduced over 300 exhibits and testimony from 27 witnesses.
- Submitted Proposed Findings of Fact and Conclusions of Law totaling 219 pages.

See Christenson Decl. ¶ 9.

Over the course of the three-and-a-half year litigation (approximately 1,352 days), ResCap's counsel performed 28,781.6 total hours for direct and indirect legal work, or an average of 21.3 hours per day. As stated *supra*, § B, ResCap consistently reminded PRMI of its obligation to indemnify ResCap for such work, but PRMI nonetheless chose to aggressively relitigate previously-decided issues on a blank slate. *See, e.g., City of Riverside v. Rivera*, 477 U.S. 561, 580 n.11 (“[A defendant] cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.”) (quotation omitted); *Coral Grp., Inc. v. Shell Oil Co.*, 2013 WL 4067625, at *5 (W.D. Mo. Aug. 12, 2013) (“[I]t is well-established that where one party, in this case the Plaintiffs, litigates tenaciously, they cannot complain about the time spent by the other party.”).

Third, these fees and costs that exceed the Award are nonetheless reasonable. If ResCap succeeds on this Motion, the requested litigation fees and costs will exceed the total Award, inclusive of interest, by approximately \$6.15 million. As the Court has recognized, the overall amount involved in a litigation “is not dispositive” and a “court may find a fee award in excess of damages to be reasonable.” *HLC Fee Award* at 852 (quoting *Best Buy Stores, L.P. v. Developers Diversified Realty Corp.*, 2011 WL 1321387, at *4 (D. Minn. Apr. 4, 2011)); accord *Braatz v. Parsons Elec. Co.*, 850 N.W.2d 706, 712 (Minn. 2014) (rejecting a “dollar-value proportionality rule,” which could hamper a party’s ability to vindicate its rights and find counsel); *Northfield Care Ctr. v. Anderson*, 707 N.W.2d 731, 736 (Minn. Ct. App. 2006) (affirming award of \$14,265.62 in attorney’s fees for recovery of \$3,838.33 in contract damages). Indeed here, the 13-day bench trial, numerous motions, including summary judgment motions, *Daubert* motions, and motions *in limine*, the 173-page summary judgment order, the 79-page *Daubert* order, and the 201-page FOF/COL speak to the time-intensive nature of this case. Furthermore, PRMI chose to heavily litigate this case, which explains why ResCap’s fees are relatively high in comparison to the Award. As Judge Easterbrook of the Seventh Circuit held, “[Defendants] contest only the aggregate outlay [of fees], yet the high total is the expected result of the way the defense was conducted.” *Cuff v. Trans States Holdings, Inc.*, 768 F.3d 605, 610 (7th Cir. 2014). There, Judge Easterbrook agreed that the requested fee exceeded awarded damages but reasoned that:

Cuff’s lawyers surely did not expect at the outset of this case to invest that much legal time in its pursuit. Sometimes events during the litigation change the calculus, and a lawyer must

avoid the sunk-cost fallacy. If, after spending \$25,000 in legal time, a lawyer is confronted with a defense that will cost \$30,000 to defeat, counsel will not say: “It is irrational to spend \$55,000 to get \$50,000.” The \$25,000 is sunk; if the suit is abandoned the recovery will be zero, so the right question is whether it is reasonable to spend \$30,000 more to get \$50,000, and the answer is yes. Suppose the same thing happens over and over in a suit, with one unexpected development after another raising the costs without raising the expected recovery. It can be reasonable to meet each of these events by investing more, even though an analysis that looks only at the bottom line (\$325,000 invested to get \$50,000) makes the total seem unreasonable.

Id. at 610. Judge Easterbrook further held that “hyperaggressive defendants who drive up the expense of litigation must pay the full costs, even if legal fees seem excessive in retrospect. *Id.* at 611; *see also Kassim v. City of Schenectady*, 415 F.3d 246, 252 (2d Cir. 2005) (“[I]n litigating a matter, an attorney is in part reacting to forces beyond the attorney’s control, particularly the conduct of opposing counsel If the attorney is compelled to defend against frivolous motions and to make motions to compel in compliance with routine discovery demands, . . . the hours required to litigate even a simple matter can expand enormously.”); *Ewald v. Royal Norwegian Embassy*, 2015 WL 1746375, at *15 (D. Minn., Apr. 13, 2015) (“Ewald and the Embassy litigated this case tooth and nail, which explains why Ewald’s attorney’s fees and costs are relatively high.”). The same is true here and the Court should accordingly award ResCap its fees and costs that exceed the Award.

II. RESCAP SHOULD BE AWARDED PREJUDGMENT INTEREST

Applicable law. Minnesota law governs this motion because ResCap asserted its indemnification claim under state law. *HLC Interest Award* at *3 (so holding). Under

Minnesota law, prejudgment interest is to be calculated “exclusively” pursuant to Minn. Stat. § 549.09, because ResCap’s damages were not “readily ascertainable” as that phrase has been defined in the case law. *Id.* Section 549.09 as relevant here, states that “[f]or a judgment or award over \$50,000 . . . the interest rate shall be ten percent per year” with such interest beginning to accrue from “the commencement of the action” and continuing “until judgment is finally entered.” Minn. Stat. § 549.09, subs. 1(a), (b) & (c)(2); *see HLC Interest Award* at *3. Further, “[b]ecause preverdict interest is part of compensatory damages,” it should be “included . . . in the total sum of the award upon which post-[Award], prejudgment interest [is] calculated.” *HLC Interest Award* at *9 (quoting *Hogenson v. Hogenson*, 852 N.W.2d 266, 276 (Minn. Ct. App. 2014)). Here, ResCap’s case commenced on the date it was filed (Fed. R. Civ. P. 3); ResCap’s damages are not “future damages” exempt from Section 549.09 (*HLC Interest Award* at *4); and no other exception applies. The application of Section 549.09 is thus straightforward:

First, the Court should award interest on the Award, at the rate of 10% per year, running from the Commencement Date to the Award Date. That amount, calculated in the same manner as in *HLC Interest Award* (at *5), is \$1,999,180.27:

Period	Interest
12/2/2016 – 12/31/2016	\$44,262.29
1/1/2017 – 12/31/2017	\$540,000.00
1/1/2018 – 12/31/2018	\$540,000.00
1/1/2019 – 12/31/2019	\$540,000.00
1/1/2020 – 8/14/2020	\$334,917.98
TOTAL	\$1,999,180.27

Christenson Decl. ¶ 18.

Second, the Court should award post-Award prejudgment interest on the sum of the Award and pre-Award interest, \$7,399,180.27 (\$5,400,000.00 + \$1,999,180.27), at the rate of 10% per year, running from the Award Date to the date on which *final* judgment is entered. *See* Minn. Stat. § 549.09, subd. 1(a) (interest shall continue “until judgment is finally entered”); *Kelley v. Kanios*, 383 F. Supp. 3d 852, 885 (D. Minn. 2019) (“Plaintiff is accordingly entitled to recover prejudgment interest from Defendant . . . at the rate of 10% per annum from September 10, 2010 until final judgment is entered[.] . . . Within seven days of this Order, the parties shall jointly file a calculation of the appropriate award of prejudgment interest pursuant to this Order so that the Court can enter *final judgment* in this matter.”) (emphasis added); *Kelley v. Boosalis*, 2018 WL 6433161, at *3 (D. Minn. Dec. 7, 2018) (“Therefore, the Trustee is granted an award of prejudgment interest from Defendant . . . at the rate of 10% per annum from September 23, 2010 until *final judgment* is entered.”) (emphasis added); *State of Minn. v. Kalman W. Abrams Metals, Inc.*, 155 F.3d 1019, 1023 (8th Cir. 1998) (“No statute or rule specifies the essential elements of a final judgment; what is required is some clear and unequivocal manifestation by the trial court of its belief that the decision made, so far as the court is concerned, is the end of the case.”) (quotation marks omitted).

Because the amount of post-Award interest cannot be calculated at this time, ResCap, as it did in HLC, following the Court’s ruling on this motion, will be prepared at the Court’s request to “promptly file [a] calculation of the appropriate award . . . over a range of three to four days, to give the Court time to review the submission and direct entry of judgment with the correct calculation.” *HLC Fee Award* at 862.

CONCLUSION

For the foregoing reasons, ResCap respectfully requests entry of an order granting (1) \$13,546,859.66 in attorney's fees and costs, (2) \$1,999,180.27 in prejudgment interest from the Commencement Date to the Award Date, and (3) post-Award prejudgment interest from the Award Date to the Judgment Date.

DATED: September 2, 2020

SPENCER FANE LLP

By: /s/ Jessica J. Nelson

Donald G. Heeman, #286023
Jessica J. Nelson, #347358
Randi J. Winter, #391354
Laurie M. Quinn, #396266
150 South Fifth Street, Suite 1900
Minneapolis, MN 55402-1267
Telephone: (612) 268-7000
Facsimile: (612) 268-7001
dheeman@spencerfane.com
jnelson@spencerfane.com
rwinter@spencerfane.com
lquinn@spencerfane.com

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

Peter E. Calamari (*pro hac vice*)
Isaac Nesser (*pro hac vice*)
Jeffrey C. Miller (*pro hac vice*)
Heather Christenson (*pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100
petercalamari@quinnemanuel.com
isaacnesser@quinnemanuel.com
jeffreymiller@quinnemanuel.com
heatherchristenson@quinnemanuel.com

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

Anthony Alden (*pro hac vice*)
Matthew Scheck (*pro hac vice*)
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100
anthonyalden@quinnemanuel.com
matthewscheck@quinnemanuel.com

Attorneys for Plaintiff ResCap Liquidating Trust