

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO. 22-2908F

In re RoundPoint Mortgage Servicing Corporation

ASSURANCE OF DISCONTINUANCE
PURSUANT TO M.G.L. CHAPTER 93A, § 5

I. INTRODUCTION

1. The Commonwealth of Massachusetts (“Commonwealth”), through the Office of Attorney General Maura Healey (“AGO”), and RoundPoint Mortgage Servicing Corporation (“RoundPoint”) enter into this Assurance of Discontinuance (“AOD”) pursuant to M.G.L. c. 93A, § 5.

2. RoundPoint is a Delaware limited liability company, headquartered in Fort Mill, South Carolina. In Massachusetts, RoundPoint primarily services mortgage loans that are owned by a Government-Sponsored Enterprise (“GSE”), including Fannie Mae or Freddie Mac.

3. Pursuant to M.G.L. c. 93A, § 6, the AGO conducted an investigation into RoundPoint's compliance with, *inter alia*, M.G.L. c. 93A, § 2 and M.G.L. c. 244, § 35B (“Section 35B” or “35B”) in its servicing activities related to residential mortgage loans secured by properties in Massachusetts.

4. Based on the investigation, the AGO alleges that RoundPoint failed to take “reasonable steps, and [make] a good faith effort to avoid foreclosure” as required by M.G.L. c. 244, § 35B, in its review of Massachusetts borrowers.

5. The AGO further alleges RoundPoint violated M.G.L. c. 93A, § 2 and two Massachusetts debt collection regulations promulgated thereunder, specifically 940 CMR 7.04 and

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940 CMR 7.08, by making excessive debt collection calls to debtors as well as failing to provide to all debtors notice of the right to validation of debt within five (5) days of RoundPoint's first communication with the debtor regarding the debt.

6. In lieu of litigation and in recognition of RoundPoint's assistance and cooperation throughout the investigation, the AGO agrees to accept this AOD on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 5.

7. RoundPoint enters into this AOD for settlement purposes only in order to avoid litigation, and denies the AGO's allegations.

8. This AOD is solely for the benefit of the parties to this AOD and may not be used or relied upon by third parties.

II. DEFINITIONS

9. All terms defined in M.G.L. c. 244, § 35B, including without limitation, "borrower," "creditor," and "mortgage loan," shall have the same meaning when used herein.

10. Where applicable, "borrower" shall also refer to the same individual who is defined as a "debtor" pursuant to 940 CMR 7.00, *et seq.*

11. Where applicable, "creditor" shall also have the same meaning as defined by 940 CMR 7.00, *et seq.*

12. "35B Notice" shall mean a notice issued by RoundPoint pursuant to M.G.L. c. 244, § 35B, and associated regulations, to a borrower in default.

13. "Communication" or "Communicating" shall have the same meaning as provided in 940 CMR 7.00, *et seq.*

14. "Covered Conduct" shall mean all activities by RoundPoint in connection with (i) its compliance with the requirements of M.G.L. c. 244, § 35B, (ii) its compliance with the Attorney

General's Debt Collection Regulations, codified at 940 CMR 7.00 *et seq*, and (iii) its compliance with the requirements of M.G.L. c. 93A, § 2 as relating to servicing of mortgage loans in the Commonwealth.

15. "Debt Validation Notice" shall mean the written Communication that a creditor is required to provide to Debtors under 940 CMR 7.08.

16. "Effective Date" shall mean the date this agreement is executed by all parties as described in Paragraph 48.

III. ALLEGATIONS

A. Compliance with M.G.L. c. 244, § 35B

17. In 2012, the Massachusetts Legislature passed An Act to Prevent Unlawful and Unnecessary Foreclosures, Chapter 194 of the Acts of 2012, codified in part as M.G.L. c. 244, § 35B.

18. To address the concern that Certain Mortgage Loans put borrowers at high risk of default and foreclosure, Section 35B provides heightened protections for borrowers with such loans. Pursuant to 35B, creditors must provide borrowers with Certain Mortgage Loans with a statutorily defined notice (the "35B Notice") and, if certain criteria are met, must conduct a review to determine whether those borrowers are eligible for a loan modification prior to publishing a notice of foreclosure sale pursuant to M.G.L. c. 244, § 14.

19. RoundPoint primarily services federally-backed mortgage loans that are held by either Ginnie Mae or a Government-Sponsored Enterprise ("GSE"), and are subject to servicing guidelines by entities like Fannie Mae, Freddie Mac, Ginnie Mae, HUD, VA or USDA. Nevertheless, RoundPoint is a mortgage servicer, and as such is obligated to comply with Section 35B, which includes mortgage servicers in the definition of "creditors." M.G.L. c. 244, § 35B(a).

20. As a result of its investigation, the AGO alleges that on a population of approximately 57 federally-backed mortgage loans where a borrower returned a 35B Notice, RoundPoint failed to appropriately comply with the requirements of M.G.L. c. 244, § 35B, and its associated regulations, 209 CMR 56.00 *et seq.*, and therefore violated M.G.L. c. 93A, § 2, by:

- i. Failing to conduct an assessment of the borrower's income, debts and obligations in the review of the loan modification, and further failing to disclose the results of such assessment to the borrower, as required by Section 35B(c);
- ii. Failing to provide borrowers with notice of their right to present a counter-offer after being offered a loan modification, as required by Section 35B(c), where not expressly prohibited by Ginnie Mae or GSE procedures;
- iii. Recording affidavits pursuant to Section 35B(f) attesting to RoundPoint's compliance with the requirements of Section 35B notwithstanding the alleged deficiencies in its 35B loan modification review processes described above.

B. RoundPoint's Compliance with 940 CMR 7.04 and 940 CMR 7.08

Debt Collection Calls

21. 940 CMR 7.04(f) provides that Creditors may not initiate more than two Communications in a seven-day period to either the Debtor's residence, cellular telephone, or other telephone number provided by the Debtor as his or her personal telephone number.

22. The AGO alleges that RoundPoint violated 940 CMR 7.04(f) by initiating more than two Communications to Debtors at their residence and/or personal telephone numbers within a seven-day period.

23. The AGO alleges that, in many instances, RoundPoint called Debtors more than twice in a seven-day period.

24. The AGO alleges that RoundPoint's call frequency, described in paragraphs 22-23 harassed Debtors and violated 940 CMR 7.04(f).

Debt Validation Notices

25. 940 CMR 7.08(1) requires that Creditors provide to Debtors within five (5) business days after the initial Communication made in connection with the collection of a Debt, notice of:

- i. The amount of the Debt;
- ii. The name of the Creditor to whom the Debt is owed;
- iii. A statement that unless the Debtor, within 30 days after receipt of the notice, disputes the validity of the Debt, or any portion thereof, the Debt will be assumed to be valid by the Creditor; and
- iv. A statement that if the Debtor notifies the Creditor in writing within 30 days after receipt of this notice that the Debt, or any portion thereof is disputed, the Creditor will obtain verification of the Debt and provide the Debtor, or an attorney for the Debtor, additional materials described in 940 CMR 7.08(2).

26. The AGO alleges that RoundPoint failed to provide borrowers in Massachusetts notice of the Debtor's right to seek validation of their alleged Debts under 940 CMR 7.08(1) within five (5) days of RoundPoint's initial Communication to the borrower.

27. Although RoundPoint provided borrowers with notice of the Debtor's right to seek validation of their alleged Debts at approximately 55 days past due, when RoundPoint considered the debt defaulted, such notice was untimely. RoundPoint failed to provide the required notice under 940 CMR 7.08(1) to all borrowers with loans that were between 30 and 54 days past due.

28. RoundPoint provided a Debt Validation Notice for all borrowers with loans that were 30 or more days past due at the time of service transfer to RoundPoint, however RoundPoint failed to send Debt Validation Notices to borrowers that boarded current and subsequently fell 30 to 54 days past due.

29. Additionally, the Debt Validation notices RoundPoint sent to debtors failed to provide the required statement that if the debtor notifies the creditor in writing within 30 days after receipt of this notice that the debt, or any portion thereof is disputed, the creditor will obtain verification of the debt and provide the debtor, or an attorney for the debtor, additional materials described in 940 CMR 7.08(2).

30. The AGO alleges that RoundPoint's conduct, described in paragraph 26-29, violated 940 CMR 7.08(1).

31. The AGO alleges that the acts or practices identified in paragraphs 17-30 above are independently or in combination unfair or deceptive, and as such constitute violations of M.G.L. c. 93A, § 2.

IV. ASSURANCES AND UNDERTAKINGS

32. In order to remedy the Covered Conduct and allegations described in this AOD, and to ensure compliance with M.G.L. c. 93A, § 2, M.G.L. c. 244, § 35B and associated regulations, RoundPoint shall undertake the business practice changes set forth in Appendix A. Within sixty (60) days of the filing of this AOD, RoundPoint shall submit documentation to the AGO sufficient to demonstrate the implementation of procedures, policies and programs to ensure compliance with the Assurances and Undertakings set forth in Appendix A.

33. RoundPoint shall, within ten (10) business days of the Effective Date of this AOD, make a payment of \$975,000 to the Commonwealth of Massachusetts. At her sole discretion, and so long as permitted by law, the Attorney General shall distribute this payment: (a) to borrowers affected by the conduct addressed through this AOD; (b) to the General Fund of the Commonwealth of Massachusetts; (c) to the Local Consumer Aid Fund established pursuant to M.G.L. c. 12, § 11G; and/or (d) for programs or initiatives designed to address the negative effects

of unfair or deceptive practices related to foreclosure, debt collection or consumer financial products in Massachusetts.

34. Unless otherwise directed by the AGO, RoundPoint shall make this payment by wire transfer or certified check, made payable to the “Commonwealth of Massachusetts,” and shall be delivered to Matthew Lashof-Sullivan, Assistant Attorney General, Consumer Protection Division, Office of the MA Attorney General, One Ashburton Place, 18th FL, Boston, MA 02108.

V. TERM, COOPERATION AND REPORTING

35. RoundPoint shall fully cooperate with the AGO in the implementation of this AOD and any related AGO monitoring, reviews or compliance undertaken by the AGO.

36. RoundPoint agrees to respond to reasonable requests from the AGO for information or documentation related to the implementation of this AOD.

37. If the AGO identifies any issue with RoundPoint’s compliance with this AOD, it shall promptly make a good faith effort to notify RoundPoint and shall allow RoundPoint a reasonable opportunity to meet and confer with the AGO and provide responses to any deficiencies prior to initiating any legal action.

38. Beginning six months from the Effective Date and continuing every six months for two years from the Effective Date, RoundPoint shall provide a “Monitoring Report” documenting its compliance with the requirements of Section IV of this AOD. The format of the Monitoring Report shall be reasonably approved by the AGO.

VI. RELEASE

39. The AGO fully and finally releases RoundPoint and its parent corporations, affiliates, subsidiaries and subdivisions, and their officers, agents, servants, employees, and

shareholders, from any and all civil liability arising out of conduct occurring prior to the Effective Date of this AOD relating to the Covered Conduct.

40. RoundPoint acknowledges the release does not cover criminal conduct.

VII. GENERAL PROVISIONS

41. This AOD shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, and the Suffolk Superior Court of the Commonwealth shall retain jurisdiction over this AOD.

42. This AOD constitutes the entire agreement between the AGO and RoundPoint and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of this AOD, including all Tolling Agreements which shall be terminated upon entry of this AOD.

43. Nothing in this AOD shall preclude any RoundPoint borrower from applying or receiving any relief available for any similarly situated RoundPoint borrower, including, without limitation, an opportunity to apply for a deed in lieu, Short Sale or other foreclosure alternative, incentive payments related to relinquishing rights to the property, loss mitigation or foreclosure prevention reviews under any other settlement or resolution with any federal or state agency or any other relief to which the borrower would otherwise be eligible.

44. This AOD can be amended or supplemented only by a written document signed by all parties or by court order. Amendments or supplements may be executed in separate counterparts, with signatures conveyed by mail or by facsimile, electronic mail, or other electronic means.

45. If there is any conflict between the provisions in this AOD and any federal law, regulation, Government Sponsored Entity (GSE) requirement, or other government investor or

insurer requirement, RoundPoint shall notify the Attorney General of such conflict. The parties shall meet and confer in good faith to resolve such conflict and shall consider amendments to this AOD as appropriate.

46. This AOD does not resolve, settle, release or otherwise affect any actual or potential claims against RoundPoint by any parties, other than the Commonwealth and its subdivisions.

47. RoundPoint waives all rights to appeal or otherwise challenge or contest the validity of this AOD.

48. This AOD may be signed in multiple counterparts, each of which shall be considered an original and all of which, when considered together, shall constitute a whole. This AOD shall be effective upon its execution by all parties hereto and shall thereafter be filed by the AGO in the Superior Court for Suffolk County, Commonwealth of Massachusetts.

49. The signatories for RoundPoint represent and warrant that they have the full legal power, capacity, and authority to bind the parties for which they are executing this AOD.

50. RoundPoint acknowledges that it was represented by counsel in this matter and had the opportunity to read and consult with counsel regarding all of the terms of this AOD.

51. By signing below, RoundPoint agrees to comply with all of the terms of this AOD.

(section intentionally blank, signatures on following page)

DATED: December 22, 2022

Office of the Massachusetts Attorney
General, Maura Healey



By:
Matthew Lashof-Sullivan (BBO No. 695922)
Miranda M. Cover (BBO No. 699058)
Assistant Attorney General

DATED: December 21, 2022

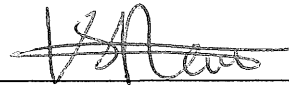
RoundPoint Mortgage Servicing
Corporation



Patrick McEnerney (Dec 21, 2022 14:35:57)

By:
Patrick McEnerney
Chief Executive Officer

Counsel for RoundPoint Mortgage Servicing
Corporation



By:
Vaishali S. Rao
Maura K. McKelvey (BBO No. 600760)
Hinshaw & Culbertson, LLP
Counsel for RoundPoint Mortgage Servicing
Corporation

APPENDIX A

A. M.G.L. c. 244, § 35B LOSS MITIGATION REVIEW

(1) Loan Modification Application Review

1. Following a borrower's notice of intent to pursue a modified mortgage loan as defined in 35B, RoundPoint shall complete a timely review of the borrower's 35B loan modification application, consistent with the requirements of 35B, and its associated regulations. Such review shall be consistent with the following:

- i. RoundPoint shall promptly review a request from a borrower to pursue a 35B modification to identify all missing documents that RoundPoint requires to complete the loan modification review. RoundPoint shall use best efforts to limit its request for additional documents following the borrower's initial submission. Such request shall be consistent with the timelines set forth in 209 CMR 56.07;
- ii. RoundPoint shall request only documents or information that the applicable servicing guidelines promulgated by the relevant investor/insurer/guarantor require to complete the review of the loan modification application, or as otherwise required by law;
- iii. When offering a loan modification in response to a 35B submission, RoundPoint shall not require an up-front payment, also known as a down payment or good faith payment, as a condition of entering the loan modification or modification trial plan¹;
- iv. Within thirty (30) days of RoundPoint's receipt of a borrower's completed 35B loan modification application package, RoundPoint shall provide such borrower with its written assessment of the application. As required by 35B(c), RoundPoint's written assessment shall disclose RoundPoint's calculation of the borrower's debts, income and obligations upon offer or denial of a loan modification. To the extent the written assessment requires information from a third-party, which is not controllable by RoundPoint, RoundPoint shall endeavor to provide the written assessment as soon as

¹ The AGO has not alleged any misconduct relating to RoundPoint requiring an up-front payment, nor does RoundPoint require one.

practicable and shall notify the borrower, in writing, of the reason for any delay; and

- v. Where RoundPoint transfers the servicing rights to a mortgage loan during the pendency of a 35B loan modification review, RoundPoint shall notify the new servicer of the status of the 35B review at the time of transfer and the outcome of the loan modification review, if applicable. Any trial plan or permanent modification RoundPoint offered to the borrower shall be promptly communicated to the new servicer to prevent unreasonable delay in implementation. Nothing herein shall impose any liability upon RoundPoint on the basis of misconduct by the transferee servicer as to a loan modification review in process after the servicing transfer is effective.

(2) 35B Loan Modification Review Results

2. Any borrower who timely responds to the 35B Notice requesting review for a loan modification will be reviewed for a modification under the program(s) offered by RoundPoint in accordance with c. 244, § 35B. Such review shall include an assessment of the borrower's ability to make an affordable monthly payment under the modified mortgage. If an affordable monthly payment cannot be achieved, or the borrower is otherwise ineligible for the program(s) offered, RoundPoint shall make a good faith effort to present its evaluation of the request for assistance to the relevant investor/insurer/guarantor for additional consideration.

3. Within 30 days of the Effective Date, RoundPoint shall issue a 35B Notice to every borrower who is at least 55 days delinquent as of the Effective Date regardless of whether the borrower has previously been solicited for a modified mortgage loan pursuant to section 35B ("Look Back Notification"). For borrowers who become 55 days delinquent after the Look Back Notification has been sent, RoundPoint shall issue a 35B Notice if it has not previously issued one after the Effective Date of this AOD. After 3 years from the Effective Date, RoundPoint need not offer a borrower a modified mortgage loan pursuant

to section 35B more than once in three years consistent with Section 35B(C), but nor is RoundPoint prohibited from offering a modified mortgage loan more than one time.

B. FILING AFFIDAVITS OF COMPLIANCE PURSUANT TO 35B(f)

4. RoundPoint shall implement policies and procedures in connection with its execution of affidavits pursuant to M.G.L. c. 244, § 35B(f) such that:

- i. RoundPoint employees who sign affidavits pursuant to 35B(f) attesting to RoundPoint's compliance with 35B shall base their testimony on the review of RoundPoint's business records evidencing the actions taken by the borrower and RoundPoint in connection with the 35B process (the "35B Review");
- ii. If RoundPoint is relying on an 35B(f) affidavit signed by a prior servicer, RoundPoint shall either verify that the prior servicer complied with the requirements of 35B as set forth in this AOD, or shall verify that RoundPoint made a good faith effort to avoid foreclosure, including through a fair loan modification review, if applicable;
- iii. RoundPoint 35B(f) affiants shall be trained and provided with a policy and procedure, which sets forth the requirements of this AOD, RoundPoint's obligations under the law and the GSE and, if applicable, insurer/guarantor servicing guidelines.

C. AUDITING & REPORTING TO THE DIVISION OF BANKS

PURSUANT TO 35B(g)

5. RoundPoint shall conduct regular audits of a sample set of borrower accounts and related 35B(f) affidavits for compliance with the requirements of 35B, its

implementing regulations and this AOD for at least a period of 2 years from the Effective Date;

6. RoundPoint shall ensure that it submits materially accurate reports to the DOB pursuant to the requirements of 35B(g), the implementing regulations, and in accordance with the DOB's instructions.

7. In the event RoundPoint discovers a materially deficient report with regard to M.G.L. 244 § 35B(g) reporting requirements, it shall submit a corrected report.

D. COMPLIANCE WITH DEBT COLLECTION REGULATIONS

8. RoundPoint shall take all actions necessary to comply with 940 CMR 7.00 *et seq.*, including but not limited to updating debt collection policies and procedures to ensure compliance with Massachusetts law.

(1) Debt Collection Calls

9. RoundPoint shall take all necessary actions to comply with 940 CMR 7.04(f), including:

- i. RoundPoint shall initiate no more than two Communications in a seven-day period for any Debt. Communications for the purposes of this paragraph shall include phone calls or text messages to a Debtor's home telephone number, cellular phone number, or any other telephone numbers provided by the Debtor as his or her personal telephone number. For the purposes of this paragraph, Communications shall also include telephone calls, whether initiated by a natural person or an automated system, in which RoundPoint has the option but chooses not to leave a voicemail.
- ii. RoundPoint shall initiate no more than two Communications in any 30-day period for any Debt to a telephone number other than a telephone number corresponding to a Debtor's residence, cellular telephone, or other telephone number provided by the Debtor as his or her personal telephone number. For the purposes of this paragraph, Communications shall also include telephone calls, whether initiated by a natural person or an automated system, in which RoundPoint has the option but chooses not to leave a voicemail.

(2) Validation of Debt

10. Within 30 days of the Effective Date, RoundPoint shall issue a debt validation notice to every borrower who is at least 30 days delinquent as of the Effective Date, regardless of whether that borrower previously received a debt validation notice.

11. After entry of this Assurance, RoundPoint shall provide the notice required by 940 CMR 7.08 to all borrowers who become greater than 30 days delinquent on any loan while that loan is serviced by RoundPoint within five (5) days of RoundPoint's initial Communication to the borrower concerning the debt, including any communication related to loss mitigation.

12. RoundPoint shall provide the notice required by 940 CMR 7.08 to all borrowers who service transfer to RoundPoint greater than 30 days delinquent on any loan within five (5) days of RoundPoint's initial Communication to the borrower concerning the debt, including any communication related to loss mitigation.